

CLERK'S COPY.

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States.

OCTOBER TERM, 1942

No. 246

CHARLES CORYELL, ET AL., PETITIONERS,

vs.

JOHN S. PHIPPS AND GEORGE J. PILKINGTON

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT**

PETITION FOR CERTIORARI FILED JULY 20, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

VOLUME I.
—
TRANSCRIPT OF RECORD

UNITED STATES
CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT.

No. 10185

CHARLES CORYELL, ET AL.,
Appellants,
versus

JOHN S. PHIPPS and GEORGE J. PILKINGTON,
Appellees.

**Appeal from the District Court of the United States for
the Southern District of Florida.**

(ORIGINAL RECORD RECEIVED DEC. 17 / 41.)



UNITED STATES CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT.

APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN DISTRICT
OF FLORIDA.

TRANSCRIPT OF RECORD.

UNITED STATES DISTRICT COURT, SOUTHERN DIS-
TRICT OF FLORIDA, MIAMI DIVISION.

CHARLES CORYELL, JULIEN J. MARKS, J. FRANK
GUYTON, J. M. FRERE, FRANK VOGT, WILLIAM
A. and DOROTHY M. CASSIDY, LEON SIGMAN,
ALBERTIS C. TAYLOR (deceased, cause of action
assigned to The Union Savings and Trust Company of
Warren, Ohio, as trustee), RALPH H. ORTHWEIN
(deceased, Gertrude Brandt Orthwein Cave, as exe-
cutrix of the estate of Ralph H. Orthwein, deceased,
substituted in his stead); N. L. NOTEMAN, CHARLES
A. SARGEANT, J. S. STEVENS, W. H. H. CHILDS
(deceased, Walter R. Kuhn and Catherine O. Grau, as
executors of the estate of W. H. H. Childs, deceased,
substituted in his stead), L. K. CONE (deceased, Mrs.
L. K. Cone, as executrix of the estate of L. K. Cone,
deceased, substituted in his stead), WENDELL AN-
DREAS, E. R. NEWLAND, H. S. THOMAS, JOHN
LOCHRIE (deceased, Cathleen Lochrie, D. T. Price,
Robert B. Lochrie, Cathleen Booz and Minnie Dickey,
as executors of the last will and testament of John
Lochrie, deceased, substituted in his stead; HENRY
BOGAARDS, JOHN PATTON, GLEASON WOOD,
SOPHIA HILLENBRAND and FLETCHER TRUST
COMPANY, executors of the Estate of George M.

Hillenbrand, deceased, ~~Re~~ GUASTAVINO, C. T. LASSEN, H. C. SALTONSTALL, W. S. LEEDS, ROSE T. LUDVIGH, executrix of the Estate of Clifford G. Ludvigh, deceased, WILLIAM P. GUERARD STEWART RAYNOR, (deceased, Edna M. Raynor, as executrix of the Estate of Stewart Raynor, deceased, substituted in his stead), GEORGE A. DOEYNE, J. WESLEY PAPE, McCOY BROTHERS INDIAN RIVER NAVIGATION COMPANY, WILLIAM STEVENS, THEOPHILUS DE MOTT, J. H. BAUER, (added by amendment) H. A. HOLLINGER (added by amendment) HARRY B. RAMPE" (added by amendment), E. R. PILLARS,

Libellants-Appellants,

versus No. 122, In Admiralty.

GEORGE J. PILKINGTON and JOHN S. PHIPPS,
Respondents-Appellees.

Bigham, Englar, Jones and Houston, New York City, and Batchelor and Dyer, Miami, Florida, Proctors for Libellants.

Burlingham, Veeder, Clark and Hupper, New York City, New York, Alley and Burns, West Palm Beach, Florida, and Loftin, Calkins, Anderson and Scott, Miami, Florida, Proctors for Respondent, John S. Phipps.

Botts and Field, Miami, Florida, Proctors for Respondent George J. Pilkington.

BE IT REMEMBERED, That in the District Court of the United States in and for the Southern District of Florida in Admiralty, in the above styled cause therein pending, the following Decrees, Orders and Proceedings were had, viz:

On the 29th day of February, 1936, libelants filed their libel, with ten interrogatories annexed thereto, in a cause of negligence, civil and maritime, which is in words and figures as follows:

**LIBEL AND INTERROGATORIES ANNEXED THERE-
TO.**

(Title Omitted.)

First: Your libelants named below are individuals and owners of the vessels and other property set opposite their names below and of the value specified, which were destroyed by fire at Fort Lauderdale, Florida, on or about June 24, 1935, as hereinafter described:

Charles Coryell, 212 Davidson Blvd., Bay City,
Mich.

Julian J. Marks, Gross Pointe Park, Michigan..

J. Frank Guyton, Memphis, Tenn.

J. M. Frere, P. O. Box 577, Wilmington, Dela-
ware

Frank Vogt, 42 Coolidge Road, Maplewood,
N. J.

William A. and Dorothy M. Cassidy, c/o Frolic
Theatre, Midland, Michigan

Leor Sigman, Chicago, Illinois

Albertis C. Taylor, 195 Oak Knoll Ave., N. E.,
Warren, Ohio

Ralph H. Orthwein, Cass Lake, Minn.

N. L. Noteman, 10 E. 40th St., Room #4202,
New York, N. Y.

Charles A. Sargeant, 407-12 Schmidt Bldg.,
Cincinnati Ohio

Yacht "Mahelaudor" \$16,000.00
Fishing boat 3,500.00
Four canoes and small boats with
four out-board motors 600.00
Yacht "Circe" 2,500.00
Yacht "Fra Mar II" 5,000.00
Yacht "Lady of the Wye" 14,667.00
Yacht "Bonetta" 3,000.00
Yacht "Miown" 3,000.00
Yacht "Lee Hann" 1,500.00
Yacht "V 20165" 2,300.00
Yacht "Amberjack" 750.00
Yacht "Valentine" 8,000.00
Yacht "Sargeantic" 42,000.00

Charles A. Sargeant, 407-12 Schmidt Bldg.,
Cincinnati Ohio
E. R. Pillars, 505 N. Union St., Fostoria, Ohio.
J. S. Stevens, 1137 Cleveland Ave., Park Hills,
Covington, Ky.
J. S. Stevens, 1137 Cleveland Ave., Park Hills,
Covington, Ky.
C. Stuart Somerville, c/o Frederic S. Doremus,
Guardian Life Insurance Co., 50 Union Sq.,
N. Y. C.
W. H. H. Childs, 49 Beverly Road, Great Neck,
L. I., New York
Anna Kramer, 345 Hillcrest Ave., Trenton, N. J.
Zackary Miller, 87 Gordon St., Perth Amboy,
N. J.
L. K. Coné, 525 N. E. 30th St., Miami, Florida.
Wendel Andreas, 55 Palm Island, Miami Beach,
Fla.
E. R. Newland, 1401 South Main St., South
Bend, Indiana
H. S. Thomas, c/o Alice Nolan, Beach Road,
Clifton Park Lagoon, Lakewood, Ohio.

Yacht "Sea Dog" 12,000.00
Yacht "Lieutenant" 6,000.00
Yacht "Oasis" 12,000.00
Yacht "Desert" 2,500.00
Yacht "Sea Drift" 3,500.00
Yacht "Catchie" 10,000.00
Yacht "My Pal Ida K" 1,180.00
Yacht "V 23487" 600.00
Yacht "Káco Tene" 5,000.00
Yacht "Acushla II" 7,500.00
Yacht "Ernco" 1,200.00
Yacht "Riposo" 3,500.00

John Lochrie, c/o Reitz Coal Co., Drawer B,
 Windber, Pa.
 Henry Bogaards, c/o American Hotel, 21 Ari-
 zona Avenue, Long Beach, N. Y.
 John Patton, 14200 Avenue O, Chicago, Illinois
 Gleason Wood, 40 Camacon Road, Rosecliff,
 North Weymouth, Mass.
 Sophia Hillenbrand and Fletcher Trust Com-
 pany, executors of the Estate of George M.
 Hillenbrand, deceased, Indianapolis, Indiana
 R. Guastavino, 500 Fifth Avenue, New York,
 N. Y.
 C. T. Lassen, Cedar Lake, Indiana
 H. C. Saltonstall, 1105 S. E. 4th St., Fort
 Lauderdale, Florida
 W. S. Leeds, 9 South Lake Trail, Palm Beach,
 Fla.
 Rose T. Ludvigh, Executrix of the Estate of
 Clifford G. Ludvigh, deceased
 William P. Guerard, 3507 St. Gaudens Road,
 Miami, Fla.

Yacht "Agnes" 5,000.00
 Yacht "Autogo IV" 2,000.00
 Yacht "Patsy" 9,000.00
 Sea Skiff 1,500.00
 Yacht "Scimitar VI" 2,500.00
 Yacht "George M" 5,000.00
 Yacht "Sancho" 2,200.00
 Yacht "Lassen" 7,500.00
 Yacht "Vagabondia II" 1,400.00
 Yacht "Margo" 10,000.00
 Yacht "Rosecliff II" 10,000.00
 Yacht "Mikar" 5,000.00

Stewart Raynor, 3100 North Bay Road, Miami Beach, Fla.	Yacht "Vagabond"	10,000.00
George A. Dobyne, Ingelton-on-Miles, Easton, Md.	Yacht "Evelyn R"	10,000.00
J. Wesley Pape, Fort Lauderdale, Florida	Yacht "San Cristobal"	5,000.00

McCoy Brothers Indian River Navigation Company is a corporation duly organized and existing under the laws of the State of Florida and was the owner of the motor vessel "Blue Lagoon" of the value of \$15,000.00 and of personal property stored on board of the value of \$1,000.00, which were destroyed by fire at Fort Lauderdale, Florida, on or about June 24, 1935, as hereinafter described.

Your libelant, William Stevens, of 90 John Street, New York, N. Y., is assignee of the rights of Joseph M. Cudahy, as owner of the yacht "Mystic" of the value of \$15,000.00, which was destroyed by fire at Fort Lauderdale, Florida, on or about June 24, 1935, as hereinafter described.

Your libelant, Theophilus DeMott, of 99 John Street, New York, N. Y., is assignee of the rights of Helen Freitas, as owner of a houseboat of the value of \$3,500.00, which was destroyed by fire at Fort Lauderdale, Florida, on or about June 24, 1935, as hereinafter described.

Second: At all the times hereinafter mentioned, the respondent, George J. Pilkington, resided, and now resides, within this district, at Fort Lauderdale, Florida, and operated at Fort Lauderdale, Florida, a yacht basin known as the Pilkington Yacht Basin, containing a large shed for the purpose of storing yachts and other vessels afloat.

Third: At all the times hereinafter mentioned, the respondent John S. Phipps was the owner of the yacht "Iolanthe" and also operated or controlled the yacht "Seminole", which yacht was owned by, and registered in the name of the Seminole Boat Corporation, a corporation whose sole asset was the yacht "Seminole". The yacht "Seminole" was used solely for the pleasure and convenience of the respondent John S. Phipps and the members of his family. The said Seminole Boat Company had no

bank account or funds for the upkeep or payment of expenses of the said yacht or wages of the crew. At and prior to the time of the disaster hereinafter described, Captain William Baker, master, and Robert Schlappi, engineer, of the yacht "Seminole", Captain R. C. Abel, master of the yacht "Ioanthe", and John Thomas, J. F. Riley, Roy H. Hawkins, W. L. Weber, E. J. Anderson, and others, were the agents, servants and employees of the respondent John S. Phipps in connection with the storage, supervision, upkeep, repairs and control of the said yachts.

Fourth: Prior to June 24, 1935, the vessels named in paragraph First of this libel, together with the personal property on board thereof, were stored afloat in tidal navigable waters of the United States, to wit, the Pilkington Yacht Basin at Fort Lauderdale, Florida, by the respondent George J. Pilkington, pursuant to agreements made by the owners thereof with said respondent, and for valuable considerations, to him in hand paid, or agreed to be paid. By virtue of said agreements it was the duty of the said respondent, Pilkington to store and care for the said vessels, to place them afloat under the shed of the aforesaid Pilkington Yacht Basin, to inspect them and other vessels so stored from time to time, to protect them and the property on board thereof from fire and other hazards, and to redeliver the same upon demand to the owners thereof in the same good order and condition as when received.

Fifth: On or about April 16, 1935, the said yacht "Seminole" arrived at the Pilkington Yacht Basin for storage. The said yacht was at the time in charge of Captain William Baker, as master, and Robert Schlappi, as engineer, both employees, agents and servants of the respondent, John S. Phipps. The said yacht "Seminole" was tendered by the said Captain Baker and accepted for storage and

placed in the shed of the Pilkington Yacht Basin, adjacent to the vessels of your libelants, by the respondent George J. Pilkington in a dangerous and unsafe condition, in that her tanks contained large quantities of gasoline, the gasoline pipes and valves of the yacht were improperly and defectively installed, the gasoline valves were not closed, and the electrical and lighting lines, switches and devices were improper, defective and improperly installed, and in other respects, all of which was apparent and readily ascertainable by inspection. The respondent George J. Pilkington made no inspection of the yacht "Seminole", or her gasoline tanks, or her engine room, or the interior of the yacht, and negligently placed the said yacht in the condition aforesaid in storage in the shed of the Pilkington Yacht Basin in proximity with the aforesaid vessels of your libelants, thereby creating serious danger of fire and conflagration, and placing the vessels and other property of your libelants in danger of destruction.

Sixth: On or about June 24, 1935, respondent John S. Phipps, owner of the yacht "Iolanthe", by virtue of his control of the yacht "Seminole", sent his employees, agents and servants, Captain R. C. Abel and John Thomas, to the Pilkington Yacht Basin with authority and instructions to board the yacht "Seminole", for the purpose of removing certain articles of personal property of the said respondent and examining certain decorative work in order to arrange for its duplication on the said respondent's yacht "Iolanthe", and for other purposes. The said R. C. Abel and John Thomas, with the consent of the respondent George J. Pilkington, boarded the yacht "Seminole", as authorized and directed by the respondent John S. Phipps. While on board said yacht "Seminole", the said R. C. Abel, in order to obtain light needed for the performance of their said mission, entered the engine room of the yacht and, although the presence of gasoline vapor

in the engine room was or should have been apparent, and although he was in fact warned thereof, negligently threw the electric light switch, which was an open knife switch. When said switch was thus thrown, it created a spark, which ignited an accumulation of gas vapor in the engine room and caused an explosion. The accumulation of gas vapor in the engine room was due to the improper and defective installation of the gasoline pipes and valves of the yacht for which said respondent John S. Phipps was responsible, and to the negligence of the respondent John S. Phipps, his agents and servants, in failing to close the gasoline valves on the yacht "Seminole", and in permitting large quantities of gasoline to remain in the tanks of the yacht which leaked through open valves and otherwise into the bilge of the yacht and created large quantities of gasoline vapor in the engine room. As a result of said explosion, Captain R. C. Abel was killed and said John Thomas was badly injured. The yacht "Seminole" and adjacent yachts and the shed of the storage basin were badly damaged by the explosion. Fire, which was caused by the explosion, broke out immediately. This fire, fed by the large quantities of gasoline present in the tanks of the yacht "Seminole", spread rapidly and burned fiercely. The fire spread so quickly through the storage shed that the shed and all the vessels under it were afire within a few minutes after the explosion. The vessels which were stored in the shed afloat, including those of libelants, were burned to the water's edge and together with the property on board thereof became total losses before effective steps could be taken to save them, thus rendering the redelivery thereof to the aforesaid owners by the respondent Pilkington in the same good order and condition as when received, impossible.

Seventh: The loss of the aforesaid vessels and other property and the consequent damages sustained by your libelants were not caused or contributed to by any fault on

the part of your libelants or persons for whom they were responsible, but were caused by fault and negligence on the part of the respondent George J. Pilkington and on the part of the respondent John S. Phipps in the following among other particulars, which will be pointed out at the trial of this action.

As to the Respondent George J. Pilkington.

1. In that said respondent failed in his duty to protect the said vessels and other property from danger of damage or destruction, and to return the same to the owners thereof in like good order and condition as when received.

2. In that said respondent failed to require that the tanks of all vessels accepted for storage should be drained of all gasoline, and, on the contrary, accepted for storage and placed in the storage shed with the vessels of your libelants the yacht "Seminole", whose tanks contained large quantities of gasoline, thereby placing the vessels and property of your libelants in serious danger of damage or destruction by fire.

3. In that the said respondent failed to inspect the yacht "Seminole" to determine whether the gasoline had been drained from her tanks before placing her in the shed of the Yacht Storage Basin.

4. In that the said respondent failed to inspect the yacht "Seminole" for fire hazards before placing her in storage with your libelants' vessels in the shed of the Yacht Storage Basin and nevertheless, although said yacht was in a dangerous and defective condition, placed her in the shed, together with the vessels of your libelants, although her tanks contained large quantities of gasoline, her gasoline pipes and valves were defective and improper and improperly installed, her gasoline valves were not

closed and her electrical and lighting lines, switches; and devices were improper, defective and improperly installed, all of which was apparent and readily ascertainable by inspection.

5. In that the said respondent failed to inspect the yacht "Seminole" from time to time after she had been placed in the storage shed and failed to discover the dangerous conditions existing.

6. In that the said respondent failed to remove the yacht "Seminole" from the shed of the Yacht Storage Basin before the disaster occurred.

7. In that the said respondent permitted the employees of the respondent, John S. Phipps, namely Captain R. C. Abel and John Thomas, to go upon and enter the yacht "Seminole" without proper supervision and without warning as to the dangerous conditions existing.

8. In that the said respondent did nothing to prevent the destruction of the vessels and property of your libellants by fire.

As To The Respondent, John S. Phipps.

1. In that the respondent, John S. Phipps, failed to maintain the yacht "Seminole" in proper, safe and seaworthy condition.

2. In that he tendered the yacht "Seminole" for storage at the Pilkington Yacht Basin with other vessels without draining all gasoline from the tanks of the yacht.

3. In that he falsely represented to the operators of the Pilkington Yacht Basin that the tanks of the yacht

"Seminole" had been drained of all gasoline when she was tendered for storage at that yard.

4. In that he permitted the yacht "Seminole" to be stored in the shed of the Yacht Storage Basin with the vessels of your libelants, although it was known, or should have been known, to him or his employees that the tanks of the yacht "Seminole" contained large quantities of gasoline; that her gasoline pipes and valves were improper, defective and improperly installed; that her gasoline valves were not closed; that the electrical and lighting lines, switches and devices were improper, defective and improperly installed; and that the said yacht was in other respects in a dangerous and unsafe condition for storage with other vessels.

5. In that he failed to permit the operators of the Yacht Storage Basin to inspect the interior of the yacht "Seminole" and concealed the dangerous and defective conditions there existing.

6. In that he failed to disclose to the operators of the Yacht Storage Basin the dangerous and defective conditions existing on board the yacht "Seminole" and caused the yacht "Seminole" to be stored in the shed of the Yacht Storage Basin with the vessels, thereby placing the vessels and property of your libelants in danger of damage or destruction by fire and conflagration.

7. In that he sent his agents and servants, Captain R. C. Abel and John Thomas, aboard the yacht "Seminole" without disclosing to them or warning them of the dangers and defective conditions existing aboard that yacht and without proper supervision, instructions or warning.

8. In that his agents and servants, negligently, threw the open knife electric switch on the yacht "Seminole", in the presence of a quantity of gasoline fumes and vapor, thereby causing the explosion, fire and conflagration which destroyed the vessels and property of your libelants.

9. In that his agents and servants negligently caused an explosion on the yacht "Seminole", thereby causing the fire and conflagration which destroyed the yachts of your libelants.

10. In that he was negligent in other respects.

Eighth: By reason of the premises, your libelants have sustained damages by reason of the loss of the said vessels and other property and by reason of expenses in connection therewith, amounting to the sum of Three Hundred Thousand (\$300,000.00) Dollars, as nearly as the same can now be estimated, no part of which has been paid, although payment has been duly demanded.

Ninth: All and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelants pray that process in due form of law, according to the course and practice of this Honorable Court in causes of Admiralty and Maritime jurisdiction, issue against George J. Pilkington and John S. Phipps, the respondents herein, and that the said respondents be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court be pleased to decree to your libelants their damages, with interest and costs, and that your libelants may have such other and further relief as in law and justice they may be entitled to receive.

BATCHELOR & DYER,

Ingraham Building,
Miami, Florida.

BIGHAM, ENGLAR, JONES &
HOUSTON,

(Proctors for Libelants.)

99 John Street,
New York, N. Y.

State of Florida,
County of Dade, ss.

Benjamin F. McCoy, being duly sworn, deposes and says:

That he is President of McCoy Brothers Indian River Navigation Company, one of the libelants named in the foregoing libel; that he has read said libel and knows the contents thereof and that it is true to the best of his knowledge, information and belief; that the reason this verification is made by deponent and not by the said libelant is that the said libelant is a corporation.

BENJ. F. McCOY,

Pres.

Sworn to before me this 26th day of February, 1936.

MILDRED M. SMITH,

(Notary Seal)

Notary Public, State of Florida at large.

My Commission expires: February 10, 1940.

Interrogatories Propounded To Be Answered Under Oath
By The Respondent John S. Phipps.

1. Is it a fact that you

(a) Purchased the Yacht Seminole, then a coal burning steam vessel in the year 1923?

(b) Converted the Yacht Seminole into a motor yacht using gasoline for fuel in the year 1934?

(c) That from the time of purchase of said yacht you caused the same to be registered in your name as the owner thereof until February 16th, 1929?

(d) That shortly prior to February 16th, 1929 you caused the organization of a corporation of the State of Delaware named Seminole Boat Company for the purpose of holding record title of the Yacht Seminole; that on said date you caused the Yacht Seminole to be registered in the name of Seminole Boat Company as record owner and that such registration continued to and including June 24th, 1935?

(e) That between April 1st, 1935 and June 24th, 1935 inclusive you were a stockholder of Seminole Boat Company? State the number of shares of stock of that corporation outstanding and the number of shares standing in your name; the length of time you had held such shares and how they were acquired; the names of all the other shareholders and the number of shares standing in the name of each. If any shares were held by any corporation, state the extent of your interest in that corporation and in the shares of stock of Seminole Boat Company held by such corporation. If any individual held shares of the Seminole Boat Company for your account or if you had any interest in such shares, give particulars.

(f) That at and prior to June 24th, 1935 the Yacht Seminole was maintained solely for the pleasure and convenience of yourself and members of your family and was subject to your personal control.

(g) That at and prior to June 24, 1935 all expenses, including wages of Captain and crew, of the Yacht Seminole, were paid by you or for your account. State the full extent of your direct or indirect payment of such expenses and the method followed of paying and providing for such expenses.

(h) That the Yacht Seminole when in operation carried your personal yachting pennant.

(i): That the Yacht Seminole was registered with one or more yacht clubs, fishing clubs, or similar organizations as your vessel.

2. State the dimensions and capacity of each of the gasoline tanks of the Yacht Seminole; also the amount of gasoline in each of these tanks at the time the Yacht Seminole was left at the Pilkington Yacht Basin for storage on or about April 16, 1935.

3. State fully the pipe line layout and connections from gasoline tanks to carburetors on Yacht Seminole showing all valves and shutoffs; also filling lines and vents. State whether with such arrangements it was possible to draw off completely all gasoline and other liquids from the tanks. If not, state the quantity of liquid which would remain in each after the contents had been drawn down to the level of the fuel lines. State whether there has been any change made on the Yacht Seminole with respect to these matters since the original installation on conversion to gasoline yacht. If so, give particulars and dates of changes. Supply blueprint plan or diagram of the same.

4. State whether you had ever been in the engine room of the Seminole and how often; whether you had ever operated the gasoline engines of the Seminole; whether you were familiar with the layout of pipe lines and connections in the engine room.

5. Describe the electrical system of the Yacht Seminole giving details of batteries, make, type, capacity, voltage, et cetera, layout of switches on switchboard in engine room, describing each and the circuit controlled thereby; state whether these switches had ever been operated by you and how often and the extent of your familiarity with the same.

6. Is it a fact

(a) That you either personally or through your agent or representative made arrangements with George J. Pilkington for storage of the Yacht Seminole at the Pilkington Yacht Basin at Fort Lauderdale, Florida. If through an agent or representative, state who that agent or representative was and the extent of his authority to represent you.

(b) That pursuant to such an arrangement so made or otherwise the Yacht Seminole was delivered to George J. Pilkington for storage with other yachts in the shed of the Pilkington Yacht Basin at Fort Lauderdale, Florida, on or about April 16, 1935.

(c) That the Yacht Seminole was so delivered by your direction.

(d) That the Yacht Seminole was so delivered by Captain William Baker and Engineer Robert Schlappi.

(e) That Captain William Baker and Engineer Robert Schlappi were employed by you, or on your behalf in such or similar capacities on the Yacht Seminole. If not, by whom were they employed.

(f) That it was an established rule of the said George J. Pilkington that yachts should not be stored under the shed of the Yacht Basin unless all gasoline had been removed from their tanks.

7. Is it a fact

(a) That on June 24, 1935 you were the owner of the Yacht Iolanthe?

(b) That R. C. Abel was in your employ as Captain of that yacht, or otherwise. If otherwise, state in what capacity.

(c) That John Thomas had been employed by you, or by R. C. Abel, or J. F. Riley with authority on your behalf, to make certain ropework for the Yacht Iolanthe similar to work of this kind on the Yacht Seminole.

(d) That R. C. Abel was directed or authorized by you, or by J. F. Riley with authority on your behalf, to take the said John Thomas on board the Yacht Seminole to inspect the ropework on that vessel.

(e) That R. C. Abel was directed or authorized by you, or by J. F. Riley with authority on your behalf to go on board the Yacht Seminole for the purpose of removing certain fishing tackle or other personal property for your account and/or for other purposes. State the purposes.

(f) That J. F. Riley had authority from you to write and give to R. C. Abel and did so write and give to R. C. Abel, on or about June 24, 1935, a letter of authority reading substantially as follows:

"Capt. Pakington,

Please let Capt. Abel take some equipment off the Seminole.

J. F. RILEY."

8. Is it a fact that J. F. Riley, and/or Palm Beach Company had authority from you and on your behalf

(a) To oversee generally all arrangements with respect to the Yacht Seminole?

(b) To negotiate and make contracts for repairs and storage of the Yacht Seminole?

(c) To employ officers or crew.

(d) To approve and pay bills for expenses.

(e) To authorize or restrict the entry of persons on board said vessel.

State the extent and scope of the duties, functions and authority of each.

9. Did Seminole Boat Company on and prior to June 24, 1935.

(a) Have any funds or bank account: If so, state where bank account was kept, extent of funds, and sources of income.

(b) Keep any books of account. If so, where and by whom were they kept.

(c) Have a stock transfer agent. If so, who and where was this agent.

10. Were shares of stock of Seminole Boat Company bought, sold, or traded in at any time prior to June 24, 1935. If so, where and by whom.

(S.) BATCHELOR and DYER,

(Batchelor and Dyer)

(S.) BIGHAM, ENGLAR, JONES & HOUSTON,

(Bigham, Englar, Jones & Houston)

Proctors for Libelants.

On the 27th day of April, 1936, respondent, George J. Pilkington, filed his answer, which is in words and figures as follows:

ANSWER OF GEORGE J. PILKINGTON.

21

(Title Omitted.)

Comes now the respondent, George J. Pilkington, and for his answer to the libel filed against him in said cause, says:

I.

That the various yachts and boats mentioned in paragraph numbered first, were stored with respondent as in this answer set forth; that so far as this respondent knows, the ownership as stated in said paragraph is correct. As to the values of the vessels as therein stated this respondent is not in a position to affirm or deny and merely requires proof of the proper ownership, and value.

II.

This respondent admits the allegations numbered second in said libel.

III.

As to the allegations in the paragraph numbered third, this respondent does not know the true facts but is informed and believes the facts to be as set forth in said paragraph numbered third.

IV.

This respondent admits that the vessels named in paragraph first of the libel, together with the personal prop-

erty on board thereof, were stored afloat in the tidal, navigable waters of the United States within the limits of Pilkington's Yacht Basin at Fort Lauderdale, Florida, by this respondent, pursuant to agreements made with the various owners of said vessels.

That the true facts and circumstances with respect to the storage of said vessels were as follows:

Prior to June 24, 1935, respondent had accepted for storage afloat in the covered storage basin operated by him at Fort Lauderdale, Florida, from the various owners or operators thereof approximately 62 yachts and other vessels, most of them being constructed of wood and all of them having more or less wood used in their construction or fittings, and most of them being fitted with engines customarily requiring the use of gasoline for motive power. Said 62 vessels included those mentioned in the First Paragraph of said libel.

This respondent had no written contract of storage with the owners of any of said vessels, all of them being accepted under a verbal contract for dead storage in this respondent's warehouse sheds, afloat in the fresh tidal waters of New River, Florida.

That this respondent under his contract of storage as a warehouseman, did not contract nor agree to prepare said vessels for laying up or storage, but required the owners of said vessels to prepare the same for storage at their own pleasure, risk and expense.

That under his said verbal contract of storage, this respondent did not obligate himself to perform any service whatsoever with respect to said vessels while same were in storage, but the contract was limited in each instance to assigning to each vessel accepted for storage, a suitable

place in said warehouse or shed where the same could remain in dead storage afloat in said fresh tidal waters until the owners of the respective vessel should terminate said storage and remove said vessel.

That it was customary for the owner of the various vessels, before storing the same, to tie the same up to a bulkhead or landing platform adjacent to said storage shed and there prepare said vessel for storage, after, which preparation being completed by the said owners or their agents or servants, the said vessel would be towed by manual power of the owners of said vessels, or their servants, or by the manual power of this respondent or his servants, to a suitable location in said storage shed, where they would be tied up and allowed to remain in said location, or some suitable substitute location in said shed, in dead storage until removed as aforesaid.

This respondent, under his contract of storage, was not required to inspect said vessels after the same had been prepared for storage by the owners as aforesaid. That it was the practice of this respondent, however, after each vessel had been prepared for storage by the owners, as aforesaid, either before or at the time when said vessel was placed under the shed in its storage berth, to go aboard said vessel and walk through all parts of said vessel which were open for inspection and examine said vessel to see whether or not, as to all open patent and usual matters said vessel had been, or on said inspection seemed to have been, properly prepared for storage. That this inspection or examination was sometimes made by this respondent in person, and some times by one of his experienced employees. That this respondent did not contract to perform any services with respect to said vessels, while the same were in storage, said contract and agreement, with respect to said storage being confined to an agreement to keep said vessels in dead storage as afore-

said. However, notwithstanding the facts aforesaid, this respondent did offer, as a gratuitous service for which this respondent received no additional compensation, when desired by the owners of the various boats, to periodically go aboard any vessel, when requested to do so by the respective owners, and air out such vessels, turn over by hand the engines, and pump out their bilges where necessary. But said services, when performed, were as aforesaid, wholly gratuitous, merely to secure the good will and favorable opinion of the owners. But in such cases, this respondent did not receive any compensation in addition to that paid by an owner for whom such services were not performed.

That this respondent had a fixed and invariable rule, applicable to every boat which he stored, that the gasoline or other motors of said vessels must not be operated while said vessels were under the sheds.

That this respondent had no fixed or invariable rule with respect as to how said vessels should be prepared for storage except that this respondent did require that all gasoline tanks and outlets therefrom, through which gasoline might flow or be drained, should be tightly and securely closed. However, this respondent did recommend to all boat owners that all gasoline be removed from vessels before the same were put in storage.

That if vessels in being prepared for storage have the gasoline tanks and outlets properly prepared as required by respondent, it is not, in fact, unsafe or dangerous for gasoline to remain in the storage tanks of said vessels.

V.

Respondent admits that on or about April 16, 1935, the said yacht "Seminole" arrived at the Pilkington Yacht

Basin for storage. That the said yacht "Seminole" was at the time in charge of Captain William Baker as Master and Robert Schlappi as engineer, both employees, agents and servants of the respondent, John S. Phipps (as this respondent is informed and believes); that the said yacht "Seminole" was tendered by said Captain Baker and accepted for storage by this respondent, and this respondent alleges that the aforesaid vessel was placed in the shed of Pilkington's Boat Yard and accepted by him for storage. That said vessel was prepared for storage by said Captain Baker and said Robert Schlappi and the agents, servants, and employees of the respondent John S. Phipps; that this respondent had nothing to do whatsoever with the preparation of said vessel for storage; that said vessel "Seminole" had been stored at the yacht basin of this respondent on a number of previous occasions and respondent had advised the master of said vessel, William Baker on previous occasions that it was necessary for said yacht to be prepared for storage by draining the gasoline from storage tanks from said yacht or by securely closing all openings through which gasoline might have been drained, and said Baker and Schlappi were well aware of the proper and safe method for preparing said yacht for storage, and informed this respondent that said yacht had been properly prepared for storage; that said Baker and Schlappi upon leaving said vessel locked the engine room thereof, took the keys away and instructed this respondent that he was not to go into said engine room for any purpose whatsoever, and was not to turn over said engine or perform any service on said vessel; that after said vessel had been prepared for storage by said Baker and Schlappi, and this respondent had been informed by said Baker and Schlappi that the said vessel was in a safe and proper condition, said vessel was moved by manual power from the place where it had been tied up outside said shed while being prepared for said storage, to storage berth within said shed.

But this respondent alleges that without negligence on the part of this respondent and without his knowledge, actual or implied, a large quantity of gasoline was left in the storage tanks of said vessel and an outlet valve through which said gasoline could drain was not securely closed but was left open so that gasoline could and actually did drain from said storage tanks into the bilge of said vessel; and this respondent denies all negligence in connection with the storage of said vessel in said yacht basin.

VI.

This respondent admits the allegations of paragraph six of said libel but denies that he was in any way responsible for the negligence therein set forth or for the fire thereby caused.

VII.

As to the seventh paragraph of said libel this respondent denies "that said respondent failed in his duty to protect the said vessels and other property from danger of damage or destruction, and to return the same to the owners thereof in good order and condition as when received."

VIII.

This respondent denies "that said respondent failed to require that the tanks of all vessels accepted for storage should be drained of all gasoline, and, on the contrary, accepted for storage and placed in the storage shed with the vessels of your libelants the yacht 'Seminole', whose tanks contained large quantities of gasoline thereby placing the vessels and property of your libelants in serious danger of damage or destruction by fire."

IX.

This respondent denies "that the said respondent failed to inspect the yacht 'Seminole' to determine whether the gasoline had been drained from her tanks before placing her in the shed of the Yacht Storage Basin."

X.

This respondent denies "that the said respondent failed to inspect the yacht 'Seminole' for fire hazards before placing her in storage with your libelants' vessels in the shed of the Yacht Storage Basin and nevertheless, although said yacht was in a dangerous and defective condition, placed her in the shed, together with the vessels of your libelants, although her tanks contained large quantities of gasoline, her gasoline pipes and valves were defective and improper and improperly installed, her gasoline valves were not closed and her electrical and lighting lines, switches, and devices were improper, defective and improperly installed, all of which was apparent and readily ascertainable by inspection."

XI.

This respondent denies "that the said respondent failed to inspect the yacht 'Seminole' from time to time after she had been placed in the storage shed and failed to discover the dangerous conditions existing."

XII.

This respondent denies "that the said respondent failed to remove the yacht 'Seminole' from the shed of the Yacht Basin before the disaster occurred."

XIII.

This respondent denies "that the said respondent permitted the employees of the respondent, John S. Phipps, namely Captain R. C. Abel and John Thomas, to go upon and enter the yacht 'Seminole' without proper supervision and without warning as to the dangerous conditions existing."

XIV.

This respondent denies "that the said respondent did nothing to prevent the destructions of the vessels and property of your libelants by fire."

XV.

That except as herein set forth, the matters and things with reference to the storage, management, control and destruction of said vessels were as alleged in this respondent's petition for indemnity, which is filed in this cause concurrently with the filing of this answer.

BOTTS & FIELD,

W. G. MILLER,

Proctors for Respondent.

State of Florida,
County of Broward.

On this day personally appeared before me, the undersigned authority, George J. Pilkington, to me well known, who having been by me first duly sworn deposes and says:

That he is one of the respondents named in the libel in said cause; that he has read the foregoing and attached answer, knows the contents thereof, and that the same is true in substance and in fact except as to those matters

alleged on information and belief, and as to those, he verily believes them to be true.

GEORGE J. PILKINGTON.

Sworn To And Subscribed before me at Fort Lauderdale, Broward County, Florida, this 24 day of March, A. D. 1936.

FLOSSIE BYRD,

(Seal)

Notary Public, State of Florida.

My commission expires: April 25, 1939.

On the 27th day of April, 1936, respondent, George J. Pilkington, filed his Petition under the 56th Rule in Admiralty against John S. Phipps, which is in words and figures as follows:

**PETITION UNDER 56th RULE IN ADMIRALTY OF
GEORGE J. PILKINGTON AGAINST JOHN S.
PHIPPS.**

30.

(Title Omitted.)

To: The Honorable The Judge of the United States District Court In and for the Southern District of Florida, Miami Division:

The Petition under the 56th Rule in Admiralty, of George J. Pilkington,
against

John S. Phipps, on Information and belief, respectfully alleges as follows:

I

Your Petitioner, George J. Pilkington, is a resident of Fort Lauderdale, Florida, and at all the times hereinafter

mentioned operated a storage basin with a large shed for the purpose of storing yachts and other vessels afloat and under cover at Fort Lauderdale, Florida.

II.

The Respondent, John S. Phipps, is a winter resident of Palm Beach, Florida, and is now within this District.

III.

On or about the 29th day of February, A. D. 1936, a Libel was filed in this Court by Charles Coryell, Julian J. Marks, and others, against your Petitioner, George J. Pilkington, and against John S. Phipps, Respondents claiming damages estimated in the total sum of \$242,442.00, for loss through destruction by fire of approximately 46 yachts and other vessels as the result of an explosion and fire which occurred at your Petitioner's Yacht Basin on or about June 24, 1935. In said libel it was alleged:

1—"Prior to June 24, 1935, the vessels named (in paragraph First of this Libel) together with the personal property on board thereof, were stored afloat in tidal navigable waters of the United States, to wit: The Pilkington Yacht Basin at Fort Lauderdale, Florida, by the respondent, George J. Pilkington, pursuant to agreements made by the owners thereof with said respondent, and for valuable considerations, to him in hand paid, or agreed to be paid. By virtue of said agreements, it was the duty of the said respondent Pilkington to store and care for the said vessels, to place them afloat under the shed of the aforesaid Pilkington Yacht Basin, to inspect them and other vessels so stored from time to time, to protect them and the property on board thereof from fire and other hazards, and to redeliver the same upon demand to the

owners thereof in the same good order and condition as when received."

2—"On or about April 16, 1935, the said yacht 'Seminole' arrived at the Pilkington Yacht Basin for storage. The said yacht was at the time in charge of Captain William Baker, as master, and Robert Schlappi, as engineer, both employees, agents and servants of the respondent, John S. Phipps. The said yacht 'Seminole' was tendered by the said Captain Baker and accepted for storage and placed in the shed of the Pilkington Yacht Basin, adjacent to the vessels of your libelants, by the respondent, George J. Pilkington, in a dangerous and unsafe condition, in that her tanks contained large quantities of gasoline, the gasoline pipes and valves of the yacht were improperly and defectively installed, the gasoline valves were not closed, and the electrical and lighting lines, switches and devices were improper, defective and improperly installed, and in other respects, all of which was apparent and readily ascertainable by inspection. The respondent, George J. Pilkington made no inspection of the Yacht 'Seminole', or her gasoline tanks, or her engine room, or the interior of the yacht, and negligently placed the said yacht in the condition aforesaid in storage in the shed of the Pilkington Yacht Basin in proximity with the aforesaid vessels of your libelants thereby creating serious danger of fire and conflagration, and placing the vessels and other property of your libelants in danger of destruction."

3—"On or about June 24, 1935, respondent John S. Phipps, owner of the yacht 'Iolanthe', by virtue of his control of the yacht 'Seminole' sent his employees, agents and servants, Captain R. C. Abel and John Thomas, to the Pilkington Yacht Basin with authority and instructions to board the yacht 'Seminole', for the purpose of removing certain articles of personal property of the said respondent and examining certain decorative work in

order to arrange for its duplication on the said respondent's yacht 'Iolanthe', and for other purposes. The said R. C. Abel and John Thomas with the consent of the respondent George J. Pilkington, boarded the yacht 'Seminole', as authorized and directed by the respondent John S. Phipps. While on board said yacht 'Seminole' the said R. S. Abel, in order to obtain light needed for the performance of their said mission, entered the engine room of the yacht and, although the presence of gasoline vapor in the engine room was or should have been apparent, and although he was in fact warned thereof, negligently threw the electric light switch, which was an open knife switch. When said switch was thus thrown, it created a spark, which ignited an accumulation of gas vapor in the engine room and caused an explosion. The accumulation of gas and vapor in the engine room was due to the improper and defective installation of the gasoline pipes and valves of the yacht for which said respondent, John S. Phipps was responsible, and to the negligence of the respondent John S. Phipps, his agents and servants, in failing to close the gasoline valves on the yacht 'Seminole', and in permitting large quantities of gasoline to remain in the tanks of the yacht which leaked through open valves and otherwise into the bilge of the yacht and created large quantities of gasoline vapor in the engine room. As a result of said explosion, Captain R. C. Abel was killed and said John Thomas was badly injured. The yacht 'Seminole' and adjacent yachts and the shed of the storage basin were badly damaged by the explosion. Fire, which was caused by the explosion broke out immediately. This first, fed by the large quantities of gasoline present in the tanks of the yacht 'Seminole', spread rapidly and burned fiercely. The first spread so quickly through the storage shed that the shed and all the vessels under it were afire within a few minutes after the explosion. The vessels which were stored in the shed afloat, including those of libelants, were burned to the

water's edge and together with the property on board thereof became total losses before effective steps could be taken to save them; thus rendering the redelivery thereof to the aforesaid owners by the respondent Pilkington in the same good order and condition as when received, impossible."

In said Label it is further alleged that the loss of the Libelants' vessels and other property and the consequent damage were caused by fault and negligence on the part of your Petitioner in the following, among other respects:

1—"In that said respondent failed in his duty to protect the said vessels and other property from danger of damage or destruction, and to return the same to the owners thereof in like good order and condition as when received."

2—"In that said respondent failed to require that the tanks of all vessels accepted for storage should be drained of all gasoline, and, on the contrary, accepted for storage and placed in the storage shed with the vessels of your libelants the yacht 'Seminole', whose tanks contained large quantities of gasoline, thereby placing the vessels and property of your libelants in serious danger of damage or destruction by fire."

3—"In that the said respondent failed to inspect the yacht 'Seminole' to determine whether the gasoline had been drained from her tanks before placing her in the shed of the Yacht Storage Basin."

4—"In that the said respondent failed to inspect the yacht 'Seminole' for fire hazards before placing her in the shed of the Yacht Storage Basin and nevertheless, although said yacht was in a dangerous and defective condition, placed her in the shed, together with the vessels

of your libelants, although her tanks contained large quantities of gasoline, her gasoline pipes and valves were defective and improper and improperly installed, her gasoline valves were not closed and her electrical and lighting lines, switches and devices were improper, defective, and improperly installed, all of which was apparent and readily ascertainable by inspection.

5—"In that the said respondent failed to inspect the yacht 'Seminole' from time to time after she had been placed in the storage shed and failed to discover the dangerous condition existing."

6—"In that the said respondent failed to remove the yacht 'Seminole' from the shed of the Yacht Storage Basin before the disaster occurred."

7—"In that the said respondent permitted the employees of the respondent, John S. Phipps, namely Captain R. C. Abel and John Thomas, to go upon and enter the yacht 'Seminole', without proper supervision and without warning as to the dangerous conditions existing."

8—"In that the said respondent did nothing to prevent the destructions of the vessels and property of your libelants by fire."

IV.

The true facts and circumstances of the matters referred to in said Libel are as follows:

Prior to June 24, 1935, Petitioner had accepted for storage afloat in the covered storage basin operated by him at Fort Lauderdale, Florida, from the various owners or operators thereof approximately 62 yachts and other vessels, most of them being constructed of wood and all of

them having more or less wood used in their construction or fittings, and most of them being fitted with engines customarily requiring the use of gasoline for motive power.

Petitioner had no written contract of storage with the owners of any of said vessels, all of them being accepted under a verbal contract for dead storage in petitioner's warehouse sheds, afloat in the fresh tidal waters of New River, Florida.

That Petitioner under his contract of storage as a warehouseman, did not contract nor agree to prepare said vessels for laying up or storage, but Petitioner required the owners of said vessels to prepare the same for storage at their own pleasure, risk and expense.

That under his said verbal contract of storage, Petitioner did not obligate himself to perform any service whatsoever with respect to said vessels while same were in storage, but the contract was limited in each instance to assigning to each vessel accepted for storage, suitable place in said warehouse or shed where the same could remain in dead storage afloat in said fresh tidal waters until the owners of the respective vessel should terminate said storage and remove said vessel.

That it was customary for the owner of the various vessels, before storing the same, to tie the same up to a bulkhead or landing platform adjacent to said storage shed and there prepare said vessel for storage, after which preparation being completed by the said owners or their agents or servants, the said vessel would be towed by manual power of the owners of said vessels, or their servants, or by the manual power of Petitioner or his servants, to a suitable location in said storage shed, where they would be tied up and allowed to remain in said loca-

tion, or some suitable substitute location in said shed, in dead storage until removed as aforesaid.

Petitioner, under his contract of storage, was not required to inspect said vessels after the same had been prepared for storage by the owners as aforesaid. That it was the practice of Petitioner, however, after each vessel had been prepared for storage by the owners, as aforesaid, either before or at the time when said vessel was placed under the shed in its storage berth, to go aboard said vessel and walk through all parts of said vessel which were open for inspection and examine said vessel to see whether or not, as to all open, patent and usual matters said vessel had been, or on said inspection seemed to have been, properly prepared for storage. That this inspection or examination was sometimes made by Petitioner in person, and some times by one of his experienced employees. That Petitioner did not contract to perform any services with respect to said vessels, while the same were in storage, said contract and agreement, with respect to said storage being confined to an agreement to keep said vessels in dead storage as aforesaid. However, notwithstanding the facts aforesaid, Petitioner did offer, as a gratuitous service for which Petitioner received no additional compensation, when desired by the owners of the various boats, to periodically go aboard any vessel, when requested to do so by the respective owners, and air out such vessels, turn over by hand the engines, and pump out their bilges where necessary. But said services, when performed, were as aforesaid, wholly gratuitous, merely to secure the good will and favorable opinion of the owners. But in such cases, Petitioner did not receive any compensation in addition to that paid by an owner for whom such services were not performed.

That Petitioner had a fixed and invariable rule, applicable to every boat which he stored, that the gasoline

or other motors of said vessels must not be operated while said vessels were under the sheds.

That Petitioner had no fixed or invariable rule with respect as to how said vessels should be prepared for storage except that Petitioner did require that all gasoline tanks and outlets therefrom, through which gasoline might flow or be drained, should be tightly and securely closed. However, Petitioner did recommend to all boat owners that all gasoline be removed from vessels before the same were put in storage.

That if vessels in being prepared for storage have the gasoline tanks and outlets properly prepared as required by Petitioner, it is not, in fact, unsafe or dangerous for gasoline to remain in the storage tanks of said vessels.

V.

For several years prior to the disaster herein referred to, the yacht "Seminole" had been at intervals during the year, stored at your Petitioner's storage basin, pursuant to agreements made with your Petitioner by the Respondent, John S. Phipps. In respect to such storage of the said Yacht "Seminole" your Petitioner was expressly instructed by the Respondent, John S. Phipps, or his authorized agent, not to go into the engine room of said yacht, or turn over said engines by hand, while the said yacht "Seminole" was in storage. By said agreement of storage, the respondent, John S. Phipps agreed and warranted to your Petitioner that the said Yacht "Seminole" was safe and in all respects fit for safe storage in Petitioner's Yacht Basin where said vessel "Seminole" would be stored with and in close proximity to the vessels of other owners which had been or should be entrusted to Petitioner for Storage and thereby (impliedly if not expressly) warranted that if gasoline was left in the tanks of said vessel, that all drains,

valves and outlets through which gasoline might be drawn or flow out of said tanks, were tightly and securely closed so that gasoline could not drain out into the bilge of said vessel, and that said drains and outlets would be kept tightly closed as aforesaid.

Pursuant to said agreement for storage, the said yacht "Seminole" was delivered at your Petitioner's Yacht basin for storage afloat under your Petitioner's shed on or about April 16, 1935, by the Respondent, Phipps, his agents and servants. That said respondent, Phipps, his agents and servants, prepared said vessel for storage while the same was moored alongside the bulkhead adjacent to your Petitioner's storage sheds but not under said sheds. That said Respondent, Phipps, his agents, servants and employees, upon tendering said vessel for storage as aforesaid, represented to your Petitioner that said Yacht Seminole was and had been in all respects, and particularly in respect to the condition existing in her engine room which Petitioner was instructed not to enter, in a safe and proper condition for storage, in the covered sheds of Petitioner's yacht basin where, as said Respondent Phipps, knew, said yacht "Seminole" would be stored in close proximity to other vessels owned by other customers of Petitioner, which vessels had been or would be entrusted to Petitioner for storage.

Replying upon the agreement, warranty and representation of the Respondent, Phipps, his agents and servants, as herein set forth, Petitioner received said yacht "Seminole" for storage in his covered yacht basin; that said yacht "Seminole" after being prepared for storage by the respondent, Phipps, his agents and servants was by manual power, moved by Petitioner, his agents and servants into a berth under said shed; that when said vessel was tendered for storage, the said vessel was locked up so that Petitioner could not go within said vessel to examine the

same which was his customary practice as aforesaid; that Petitioner demanded that the keys to said vessel be delivered to him and he was furnished with keys which gave him access to all portions of said vessel except the engine room of said vessel, and Petitioner did make his customary examination except as to the engine room which he could not enter; that during the previous years when said vessel "Seminole" had been stored in Petitioner's yacht basin as hereinbefore stated, Petitioner had never been delivered the keys to said engine room, and as aforesaid, had been expressly instructed not to enter said engine room; that by reason of the premises, Petitioner did not and could not discover the dangerous and defective condition within said engine room as herein stated.

Notwithstanding the premises and the duties and warranties of the respondent, Phipps, as herein set forth, the said yacht "Seminole" when tendered to Petitioner for storage and stored in said shed on or about the 16th day of April, A. D. 1935, was, not in fact, safe or fit for storage in your Petitioner's yacht basin, but on the contrary, said Yacht "Seminole" was in a dangerous and unsafe condition, in that her tanks then contained large quantities of gasoline (which of itself did not necessarily render said vessel unsafe), the gasoline pipes and valves of the yacht were improper, defective and improperly installed, the gasoline valves were not closed, and the electrical and lighting lines, switches and devices were improper, defective and improperly installed, and in other respects, all in violation of the agreement, warranty and representations to Your Petitioner of the Respondent, John S. Phipps, his agents, servants and employees.

Upon arrival at Petitioner's yacht basin on or about April 16, 1935, the said yacht "Seminole" was in the charge of William Baker, as Master, and Robert Schlappi, as engineer. The aforesaid Baker and Schlappi were agents,

servants and employees of the Respondent, John S. Phipps. The said yacht was tendered by the said Captain Baker to the Petitioner for storage in the dangerous and unsafe condition hereinbefore described, and the said Baker and Schlappi negligently failed to properly close or cause to be closed the gasoline valves on or attached to the tanks and fuel lines of the said yacht and left them open in such a way as to permit gasoline to escape into the engine room and bilges of said vessel, thus causing the gasoline vapor to be present in her engine room and bilges.

On or about June 24, 1935, the respondent, John S. Phipps, sent his agents, servants and employees, Captain R. C. Abel and John Thomas to Petitioner's yacht basin with authority and instructions to board said yacht "Seminole" for the purpose of removing certain articles of personal property from said vessel, and for the purpose of examining certain useful or decorative work installed upon said vessel, in order to arrange for the installation of similar useful or decorative work on the yacht "Iolanthe", then owned by the respondent, John S. Phipps, and for other purposes. Upon the arrival of said Abel and Thomas at said yacht basin of Petitioner, for the purpose of carrying out their mission aforesaid, for said Phipps, the said Abel and Thomas, with the consent of the Petitioner, boarded said yacht "Seminole" as they had been authorized and directed to do by representatives of said Phipps and on his behalf. While on board said yacht "Seminole" the said R. C. Abel, in order to obtain light needed for the performance of his mission aboard said vessel "Seminole" or for other purposes, entered the engine room of said yacht where the light switches were located. At the time when said Abel entered the engine room of said yacht "Seminole", the presence of gasoline vapor in said engine room was, or by the exercise of reasonable care and caution, would have been apparent to said Abel. Said

Abel was, on or about the time when he entered said engine room, warned of the presence therein, of said gasoline vapor.

That at the time when said yacht "Seminole" was tendered and received for storage as aforesaid, and at the time when said Thomas and Abel went aboard said vessel as aforesaid, the switches installed on said vessel "Seminole" which were in the engine room and by which electric lights were turned on said vessel were of a kind commonly known and designated as "knife switches"; that knife switches of the kind which were installed in and upon said yacht "Seminole" as aforesaid, on being operated, that is, on being opened or closed, frequently emitted or caused an electric spark as he, the said R. C. Abel then and there well knew, or by the exercise of reasonable care and caution could have known. That about the time when said Abel entered said engine room as aforesaid, and while said engine room contained the fumes of gasoline as aforesaid, as he, the said Abel then and there knew, or by the exercise of reasonable care and caution could and would have known, he, the said Abel, entered the said engine room and negligently and carelessly operated and manipulated a certain electric light knife switch located in said engine room as aforesaid.

That when said Abel operated and manipulated said knife switch in said engine room as aforesaid which engine room, due to the negligence of the Respondent Phipps as herein stated, then contained gasoline fumes or vapor, the operation and manipulation of said knife switch created or caused to be emitted from said switch, an electric spark which spark ignited the gasoline fumes or vapor which, due to the negligence aforesaid was then present in said engine room, and thereby by reason of the negligence aforesaid, said gasoline vapor was caused to explode.

Petitioner alleges that the accumulation of gasoline vapor in said engine room as aforesaid, was due to the improper and defective condition of valves and gasoline pipes of the said yacht "Seminole" for which the said John S. Phipps was responsible, and to the negligence of the representatives of John S. Phipps, his agents, servants and employees, in failing to close the gasoline valves and outlets from the gasoline tanks of said yacht "Seminole" prior to placing said vessel in storage, and allowing the valves and outlets of said yacht "Seminole" to be so far open as to permit large quantities of gasoline which was left in the tanks of said vessel, to leak out and flow into the bilge of said yacht, thereby creating and causing large quantities of gasoline vapor to be present in said engine room when said Abel operated and manipulated said electric switch as aforesaid.

As a result of said explosion said R. C. Abel was killed and said John Thomas was badly injured. The yacht "Seminole" and certain other yachts adjacent thereto, and petitioner's storage shed were badly damaged by said explosion; a fire was caused by said exploding and immediately ignited said yacht "Seminole" and the gasoline and gasoline vapor; and this fire, fed by the large quantity of gasoline present in the bilge of the said yacht "Seminole" burned firecely and spread rapidly to said storage shed and various of the vessels stored therein. Said fire spread so quickly and burned so firecely that the entire storage shed and all the vessels stored within it were on fire within a few minutes after said yacht explosion. All the vessels which were then stored afloat in and adjacent to said shed, including certain vessels of the Libelants described in said libel, were badly damaged by fire, and in many, if not most instances, were burned to the water's edge, and together with large amounts of personal property then upon said vessels, were almost completely destroyed, and save for some very small salvage value, were,

by said fire, as aforesaid, rendered a total loss. That due to the rapidity with which said flames spread and the fierceness with which it burned, petitioner, though he attempted to do so, was unable to remove any vessel from said shed; but said vessels were, including said yacht "Seminole" all destroyed by fire and have become a total loss. That thus by the fault of the representatives of said Phipps and without negligence on the part of the Petitioner, said vessel, including all of the vessels of the libelants herein, were rendered a total loss, and the delivery thereof to the various owners thereof, by Petitioner, in good order, was rendered impossible.

VI.

The explosion and fire hereinbefore referred to which occurred on the yacht "Seminole" and the resulting fire and conflagration which destroyed the vessels of your Petitioner and of the Libelants herein, was not caused nor contributed to by any negligence or fault on the part of your Petitioner, but were, as aforesaid, caused by and resulted from the dangerous, unsafe, defective and improper condition in which the yacht "Seminole" was tendered by the respondent, John S. Phipps, his agents, servants and employees and received by your Petitioner for storage, said improper condition of said yacht "Seminole" then being in violation of the agreement, warranty and representations by the respondent, John S. Phipps, his agents, servants and employees, to your Petitioner hereinbefore alleged, and were further caused by fault and negligence on the part of the respondent, John S. Phipps in the following among other particulars which will be pointed out at the trial of this action:

- 1—In that the respondent, John S. Phipps failed to maintain the yacht "Seminole" in proper, safe and seaworthy condition.

2—In that he permitted the yacht "Seminole" to be stored in the shed of the Yacht Storage Basin with the vessels of your libelants; although it was known, or should have been known; to him or his employees that the tanks of the yacht "Seminole" contained large quantities of gasoline; that her gasoline pipes and valves were improper, defective and improperly installed; that her gasoline valves were not closed; that the electrical and lighting lines, switches and devices were improper, defective and improperly installed; and that the said yacht was in other respects in a dangerous and unsafe condition for storage with other vessels.

3—In that he failed to permit the operators of the Yacht Storage Basin to inspect the engine room of the yacht "Seminole" and concealed the dangerous and defective conditions there existing.

4—In that he failed to disclose to the operators of the Yacht Storage Basin the dangerous and defective conditions existing on board the yacht "Seminole" and caused the yacht "Seminole" to be stored in the shed of the Yacht Storage Basin with the vessels, thereby placing the vessels and property of the Libelants, your Petitioner's, property in danger of damage or destruction by fire and conflagration.

5—In that he sent his agents and servants, Captain R. C. Abel and John Thomas, aboard the yacht "Seminole" without disclosing to them or warning them of the dangerous and defective conditions existing aboard that yacht and without proper supervision, instructions or warning.

6—In that his agents and servants, negligently operated and manipulated the open knife electric switch on the yacht "Seminole" in the presence of a quantity of gasoline fumes and vapor, thereby causing the explosion, fire and

conflagration which destroyed the vessels and property of your Libelants.

7—In that his agents and servants negligently caused an explosion on the yacht "Seminole" thereby causing the fire and conflagration which destroyed the yachts of your libelants.

8—In that he was negligent in other respects.

VII.

Your Petitioner alleges that by reason of the premises, the Respondent, John S. Phipps, is liable to your Petitioner for the damages set forth herein and in the Libel in this cause, and further, that if your Petitioner should be held by the Court to be liable to the Libelants herein for damages, the respondent, John S. Phipps, is liable to your Petitioner for indemnity with respect to such liability and is liable directly and primarily to the Libelant herein.

VIII.

Your Petitioner files herewith his answer to the Libel and a proper Stipulation with sufficient surety to pay all costs, damages and expenses which may be awarded against your Petitioner by this Court, or in case of an Appeal to any Appellate Court,

Wherefore, Petitioner prays that Process in due form of law, according to the course and practice of this Honorable Court in causes of Admiralty and Maritime jurisdiction, may issue against the Respondent, John S. Phipps, and that the said Respondent may be cited to appear and answer all and singular the matters aforesaid; and further that this Court be pleased to decree that the Petitioner is not liable to Libelants herein; or, if liable, that the said

Respondent, Phipps, is liable to indemnify your Petitioner against any such liability and is liable directly and primarily to the Libelants herein; and that the Court will make such further orders or decrees as to law and justice may appertain.

BOTTS & FIELD,
W. G. MILLER,
Proctors for Petitioner.

State of Florida,
County of Broward, ss.

On this day personally appeared before me, the undersigned authority, George J. Pilkington, to me well known, who having been by me first duly sworn deposes and says that he is Petitioner in the above styled cause; that he has read the foregoing Petition, knows the contents thereof, and that the same is true in substance and in fact except as to those things which are alleged on information and belief, and as to those, he verily believes them to be true.

GEORGE J. PILKINGTON.

Sworn To And Subscribed before me at Fort Lauderdale, Broward County, Florida, this 24 day of March, A. D. 1936.

FLOSSIE BYRD,

(Seal)

Notary Public, State of Florida.

My commission expires: April 25, 1939.

On the 4th day of May, 1936, respondent, John S. Phipps, filed an answer, with six interrogatories annexed thereto, and an answer to the interrogatories propounded by libelants, which are in words and figures as follows:

ANSWER OF RESPONDENT, JOHN S. PHIPPS WITH INTERROGATORIES ANNEXED THERETO;

ANSWER OF RESPONDENT, JOHN S. PHIPPS TO INTERROGATORIES PROPOUNDED BY LIBELANTS.

To the Honorable the Judge of the United States District Court for the Southern District of Florida, Miami Division.

The answer of John S. Phipps, respondent, to the libel and complaint of Charles Coryell and others in an alleged cause of negligence, civil and maritime, alleges upon information and belief as follows:

First: Respondent denies that he has knowledge or information sufficient to form a belief as to the allegations contained in the first article of the libel.

Second: Respondent admits the allegations contained in the second article of the libel.

Third: Respondent admits that in April, May and June, 1935, the yacht Iolanthe was owned by him, that the yacht Seminole was owned by, and registered in the name of, Seminole Boat Co., and that said company had no bank account. Respondent denies the other allegations contained in the third article of the libel.

Fourth: Respondent denies that he has knowledge or information sufficient to form a belief as to the allegations contained in the fourth article of the libel.

Fifth: Respondent denies that at the times alleged Captain William Baker, as master, and Robert Schlappi, as

engineer, were employees, agents or servants of John S. Phipps; that the yacht Seminole was in a dangerous or unsafe condition; that her tanks contained large quantities of gasoline; that her gasoline pipes and valves were improperly or defectively installed; that her gasoline valves were not closed; that the electrical or lighting lines, switches or devices were improper, defective or improperly installed; that any such condition as alleged was apparent or ascertainable; that the Seminole created any danger of fire or conflagration, or placed any vessels owned by libelants in danger. Further answering, respondent denies that he has knowledge or information sufficient to form a belief as to the other allegations contained in the fifth article of the libel.

Sixth: Respondent denies that on June 24, 1935, R. C. Abel or John Thomas were his employees, agents or servants; that he sent R. C. Abel or John Thomas to the Pilkington Yacht Basin; that he authorized or directed R. C. Abel or John Thomas to board the yacht Seminole; that any gasoline pipes or valves of the Seminole were improperly or defectively installed; that he is responsible for any improper or defective installation of any gasoline pipes and valves; that he or any servants or agents of his negligently failed to close any gasoline valves on the Seminole or permitted large quantities of gasoline to remain in the Seminole's tanks; that any gasoline leaked into the bilge of the Seminole; that any large quantity of gasoline vapor was present in her engine room; that he or his agents or servants were negligent; that any fire was fed by large quantities of gasoline present in the tanks of the Seminole. Further answering, respondent denies that he has knowledge or information sufficient to form a belief as to the other allegations contained in the sixth article of the libel, except that he admits that there was a fire.

Seventh: Respondent denies the allegations of fault and negligence as to him and any agents or servants of his, and denies that he has knowledge or information sufficient to form a belief as to the other allegations contained in the seventh article of the libel.

Eighth: Respondent denies the allegations contained in the eighth article of the libel.

Ninth: Respondent admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court and denies the other allegation contained in the ninth article of the libel.

Tenth: Further answering, respondent alleges that he neither owned, operated nor controlled the yacht Seminole in April, May or June, 1935, and that he is ignorant of the circumstances of the fire alleged to have occurred in the Pilkington Yacht Basin on or about June 24, 1935, as well as the details of the arrangements made by the Seminole Boat Co., for the storage of the yacht Seminole at the Pilkington Yacht Basin.

All and singular the premises are true.

Wherefore, respondent John S. Phipps prays that the libel be dismissed as to him with costs.

R. C. ALLEY,

LOFTIN, STOKES & CALKINS,

BURLINGHAM, VEEDER,

CLARK & HUPPER,

Proctors for Respondent,

John S. Phipps.

JNO. P. STOKES,

Of Proctors for Respondent,

John S. Phipps.

Answers to Interrogatories:

1. (a) No.

(b) No.

(c) Respondent excepts to interrogatory 1 (c) on the ground that the ownership of the yacht Seminole on and prior to February 16, 1929, is irrelevant and immaterial.

(d) Respondent excepts to interrogatory 1 (d) on the ground that the information sought to be elicited is irrelevant and immaterial, except that he admits that the registered owner of the yacht Seminole on June 24, 1935, was Seminole Boat Co.

(e) Respondent excepts to interrogatory 1 (e) on the ground that the information sought to be elicited is irrelevant and immaterial.

(f) No.

(g) No. The expenses incurred on behalf of the yacht Seminole were paid by the Seminole Boat Co. and periodically the sum of such payments was made good by the shareholders of that Company in the proportion in which the shares held by each bore to the total number of shares outstanding.

(h) Respondent excepts to interrogatory 1 (h) on the ground that the information sought to be elicited is irrelevant and immaterial.

(i) Respondent excepts to interrogatory 1 (i) on the ground that the information sought to be elicited is irrelevant and immaterial.

2. Respondent does not know.

3. Respondent does not know, and has no blueprint of the pipe line layout and connections from gasoline tanks to carbureters on the Seminole, or the locations of valves, shut-offs, filling lines and vents. Respondent does not know whether it was possible to draw off completely all gasoline or other liquids from the tanks. Respondent does not know whether any changes in such arrangements were made subsequent to the Seminole's original conversion from steam to gasoline.

4. Respondent has made casual visits to the engine room of the Seminole, but does not know how often. Respondent has never operated the gasoline engines on the Seminole and was not familiar with the layout of pipe lines and connections in the engine room.

5. The electricity used on the Seminole was supplied by batteries, which in turn were charged periodically by a generator. Respondent does not know the make, type, capacity or voltage of the batteries or the layout of the switches on any switchboard. Respondent does not recall whether any such switches had ever been operated by him. Respondent was not familiar with the same.

6. (a) No.

(b) Respondent does not know.

(c) No.

(d) Respondent does not know.

(e) William Baker and Robert Schlappi were not employed by respondent or on respondent's behalf, but, upon information and belief, were at some times employed by Seminole Boat Co.

(f) Respondent does not know.

7. (a) Yes.

(b) R. C. Abel was not in respondent's employ in any capacity on June 24, 1935.

(c) No.

(d) No.

(e) Not by respondent; respondent does not know as to Riley.

(f) Riley had no such authority; respondent does not know the fact as to the letter.

8. Respondent was not the owner of the yacht Seminole. Any authority possessed by J. F. Reilly and the Palm Beach Company to act with reference to the Seminole flowed from the Seminole Boat Co., of which respondent was merely a stockholder.

9. Respondent excepts to interrogatory 9 on the ground that the information sought to be elicited is irrelevant and immaterial.

10. Respondent excepts to interrogatory 10 on the ground that the information sought to be elicited is irrelevant and immaterial.

R. C. ALLEY,
LOFTIN, STOKES & CALKINS,
BURLINGHAM, VEEDER,
CLARK & HUPPER,
Proctors for Respondent,
John S. Phipps,
JNO. P. STOKES,
Of Proctors for Respondent,
John S. Phipps.

State of Florida,

Southern District of Florida, ss.

John S. Phipps, being duly sworn, says that he is the respondent herein; that he has read the foregoing answer and answers to interrogatories and that the same are true to the best of his knowledge, information and belief.

JOHN S. PHIPPS.

Sworn to before me this 2nd day of May, 1936.

JACK M. GORHAM,

Notary Public, State of Florida.

(Seal)

My commission expires: July 27, 1936.

Interrogatories Propounded by Respondent John S. Phipps
To The Libelants To Be Answered Under Oath:

1. State the over-all dimensions of each of the vessels referred to in the first article of the libel.
2. State the nature of the motive power which propelled each of the vessels mentioned in the first article of the libel.
3. With respect to those vessels referred to in the first article of the libel which were propelled by gasoline, state (a) the total capacity of their gasoline tanks, and (b) the amount of gasoline in the tanks of each of such vessels when they were delivered for storage at the Pilkington Yacht Basin.
4. State the date on which each of the vessels referred to in the first article of the libel was delivered for storage at the Pilkington Yacht Basin.

5. State what persons were aboard each of the vessels referred to in the first article of the libel on June 24, 1935, prior to the time of the alleged explosion on the Seminole, and (a) the purpose of each such persons on board each such vessel, and (b) whether or not the engine in any such vessel was operated on June 24, 1935, prior to the time of the alleged explosion on the Seminole.

6. Attach to your answers to these interrogatories a diagram or plan showing the location of each of the vessels referred to in the first article of the libel and the alleged location of the yacht Seminole within the Pilkington Yacht Basin shed or basin at the time of the alleged explosion on the Seminole.

R. C. ALLEY,
LOFTIN, STOKES & CALKINS,
BURLINGHAM, VEEDER,
CLARK & HUPPER,

Proctors for Respondent

John S. Phipps.

JNO. P. STOKES,

Of Proctors for Respondent

John S. Phipps.

On February 17th, 1937, an Order of Court was filed, which is in words and figures as follows:

ORDER GRANTING LEAVE TO AMEND PHIPPS' ANSWER, ETC.

Copy.

In the United States District Court for the Southern District of Florida, Miami Division.

Charles Coryell, et al., Libelants,

vs.

In Admiralty, No. 122.

George J. Pilkington and John S. Phipps, Respondents.

Order Granting Leave to Amend Phipps' Answer; Overruling Libelants' Exceptions to Interrogatories contained in Answer; and to Require George J. Pilkington to Make Discovery, Etc.

This cause, after due notice, came on for hearing before me this 17th day of February, 1937, on

(a) the application of John S. Phipps for leave to amend his answer by setting up the defense of limitation of liability, and the objections of the libelants filed thereto,

(b) the libelants' exceptions to the interrogatories attached to the answer of John S. Phipps, and

(c) the motion of John S. Phipps for an order requiring George J. Pilkington to make discovery of all things taken from the yacht "Seminole" on or after June 24, 1935, etc.

And the Court being duly advised in the premises, it is Considered and Ordered As follows:

1. That the respondent John S. Phipps be and he is hereby granted leave to amend his answer, heretofore filed herein, by striking out the last three lines thereof and inserting the following:

"Eleventh: Further answering, respondent alleges that if he is liable for any of the damages claimed against him herein, which he denies, the same were done, occasioned or incurred without his privity or knowledge and he is entitled to limit his liability, if any, to the value of his interest in the yacht Seminole, pursuant to Sections 4283 and 4284 of the Revised Statutes of the United States and the statutes supplementary thereto and amendatory thereof, and respondent claims the benefit of the same."

All and singular the premises are true.

Wherefore respondent prays that the libel be dismissed as to him with costs, but that if such relief be not granted, then that his liability in the premises, if any, be limited to the amount or value of his interest in the yacht Seminole, and for such other and further relief as may be just."

2. That the exceptions heretofore taken by the libelants to the interrogatories attached to the answer of the respondent John S. Phipps and propounded by said Phipps to the libelants, to be answered under oath, be and the same are hereby overruled; and the libelants are hereby required to answer said interrogatories, under oath, on or before the 15th day of March, 1937.

3. That George J. Pilkington, respondent, be and he is hereby ordered to make, within ten days from the date of

this order, full and complete discovery, under oath, of all and all manner of valves, switches, panels, pieces and parts thereof, and all manner of things of whatsoever nature that are now or have been in his possession or under his control, or in the possession or under the control of any agent, servant, employee or representative of him, that were taken or removed from the yacht "Seminole" on or after June 24, 1935; that said George J. Pilkington produce and deliver unto the clerk of this Court at Miami, Florida, within 10 days from the date of this order, all of such valves, switches, panels, pieces and parts thereof, and all manner of things of whatsoever nature that are now in his possession or under his control, or in the possession or under the control of any agent, servant, employee, or representative of him; and that the respondent John S. Phipps, or his proctors of record, be permitted to examine said effects at any time.

Done And Ordered at Miami, Dade County, Florida, in chambers, this 17th day of February, 1937.

JOHN W. HOLLAND,

United States District Judge.

On the 10th day of March, 1937, respondent, John S. Phipps, filed his Amended Answer, which is in words and figures as follows:

AMENDED ANSWER OF RESPONDENT, JOHN S. PHIPPS.

To the Honorable the Judge of the United States District Court for the Southern District of Florida, Miami Division.

First: Respondent denies that he has knowledge or information sufficient to form a belief as to the allegations contained in the first article of the libel.

Second: Respondent admits the allegations contained in the second article of the libel.

Third: Respondent admits that in April, May and June, 1935, the yacht Iolanthe was owned by him, that the yacht Seminole was owned by, and registered in the name of, Seminole Boat Co., and that said company had no bank account. Respondent denies the other allegations contained in the third article of the libel.

Fourth: Respondent denies that he has knowledge or information sufficient to form a belief as to the allegations contained in the fourth article of the libel.

Fifth: Respondent denies that at the times alleged Captain William Baker, as master, and Robert Schlappi, as engineer, were employees, agents or servants of John S. Phipps; that the yacht Seminole was in a dangerous or unsafe condition; that her tanks contained large quantities of gasoline; that her gasoline pipes and valves were improperly or defectively installed; that her gasoline valves were not closed; that the electrical or lighting lines, switches or devices were improper, defective or improperly installed; that any such condition as alleged was apparent or ascertainable; that the Seminole created any danger of fire or conflagration, or placed any vessels owned by libelants in danger. Further answering, respondent denies that he has knowledge or information sufficient to form a belief as to the other allegations contained in the fifth article of the libel.

Sixth: Respondent denies that on June 24, 1935, R. C. Abel or John Thomas were his employees, agents or servants; that he sent R. C. Abel or John Thomas to the Pilkington Yacht Basin; that he authorized or directed R. C. Abel or John Thomas to board the yacht Seminole; that any gasoline pipes or valves of the Seminole were

improperly or defectively installed; that he is responsible for any improper or defective installation of any gasoline pipes and valves; that he or any servants or agents of his negligently failed to close any gasoline valves on the Seminole or permitted large quantities of gasoline to remain in the Seminole's tanks; that any gasoline leaked into the bilge of the Seminole; that any large quantity of gasoline vapor was present in her engine room; that he or his agents or servants were negligent; that any fire was fed by large quantities of gasoline present in the tanks of the Seminole. Further answering, respondent denies that he has knowledge or information sufficient to form a belief as to the other allegations contained in the sixth article of the libel, except that he admits that there was a fire.

Seventh: Respondent denies the allegations of fault and negligence as to him and any agents or servants of his, and denies that he has knowledge or information sufficient to form a belief as to the other allegations contained in the seventh article of the libel.

Eighth: Respondent denies the allegations contained in the eighth article of the libel.

Ninth: Respondent admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court and denies the other allegation contained in the ninth article of the libel.

Tenth: Further answering, respondent alleges that he neither owned, operated nor controlled the yacht Seminole in April, May or June, 1935, and that he is ignorant of the circumstances of the fire alleged to have occurred in the Pilkington Yacht Basin on or about June 24, 1935, as well as the details of the arrangements made by the Seminole

Boat Co., for the storage of the yacht Seminole at the Pilkington Yacht Basin.

Eleventh: Further answering, respondent alleges that if he is liable for any of the damages claimed against him herein, which he denies, the same were done, occasioned or incurred without his privity or knowledge and he is entitled to limit his liability, if any, to the value of his interest in the yacht Seminole, pursuant to Sections 4283 and 4284 of the Revised Statutes of the United States and the statutes supplementary thereto and amendatory thereof, and respondent claims the benefit of the same.

All and singular the premises are true.

Wherefore respondent prays that the libel be dismissed as to him with costs, but that if such relief be not granted, then that his liability in the premises, if any, be limited to the amount or value of his interest in the yacht Seminole, and for such other and further relief as may be just.

R. C. ALLEY,
LOFTIN, STOKES & CALKINS,
By JNO. P. STOKES.
BURLINGHAM, VEEDER,
CLARK & HUPPER,
Proctors for Respondent,
John S. Phipps.

State of Florida,
Southern District of Florida, ss.

John S. Phipps, being duly sworn, says that he is the respondent herein; that he has read the foregoing answer and that the same is true to the best of his knowledge, information and belief.

JOHN S. PHIPPS.

Sworn to before me this 8th day of March, 1937.

BELLE WHIDDEN,

(Notarial Seal)

Notary Public, State of Florida at Large.

My Commission Expires June 26, 1939.

On October 21st, 1936, libelants filed their motion for an order overruling exceptions of respondent, John S. Phipps, to certain interrogatories propounded by libelants and annexed to their libel; for leave to libelants to propound additional interrogatories; to strike out as sham certain of respondent Phipps' answers; and for discovery, which is in words and figures as follows:

64

MOTION.

(Title Omitted.)

Sirs:

Take Notice that on the libel and interrogatories filed herein on or about February 29, 1936, and on the answer and answers to interrogatories filed herein by the respondent, John S. Phipps, on or about May 5, 1936, and upon the annexed affidavit of Leonard J. Matteson, verified October 14, 1936, and upon all papers filed and proceedings had herein, we shall move this Court at a Stated Term for the hearing of motions, to be held in the Court Rooms thereof, U. S. Post Office Building, Miami, Florida, on the 13th day of November, 1936, at 11:00 A. M., or as soon thereafter as counsel can be heard, for an order:

(1) overruling the alleged exceptions of the respondent, John S. Phipps, to the interrogatories attached to the

libel filed herein numbered 1 (c), 1 (d), 1 (e), 1 (h), 1 (i), 9 (a), 9 (b), 9 (c) and 10 and requiring the respondent, John S. Phipps, to give full and complete answers with respect thereto,

(2) permitting the libelants to amend interrogatories 1 (a), 1 (b), 1 (f), 6 (a), 6 (b), 6 (d), 6 (e), 7 (b), 7 (e), 7 (f) and 8 as prayed for,

(3) permitting the libelants to propound additional interrogatories 1 (j), 1 (k), 1 (l) and 11 as prayed for,

(4) striking out as sham respondent's answers to interrogatories 2, 3, 4, 5, 6 (c), 7 (c) and 7 (d), and requiring the respondent to answer anew and give full, true, un-evasive and explicit answers to such interrogatories or amended interrogatories,

And Further for an order requiring the respondent John S. Phipps, his agents, or representatives, Seminole Boat Company and Palm Beach Company, to make discovery on oath of any documents which are, or have been, in his or their possession or power relating to the ownership or operation of the yacht "Seminole", employment and payment of wages of officers or crew thereof, or of work, labor or services in connection therewith, and of the distribution, apportionment and making good of the expenses incurred on behalf of the said yacht "Seminole" by the shareholders of that Company, including books of account, cash books, check books, ledgers, stock books, statements or account, debit notes and all other books and documents relating or pertaining thereto, and for such other and further relief as to the Court may seem just.

Dated, Miami, Florida, October 16, 1936.

(S.) **BATCHELOR & DYER,**

(Batchelor & Dyer)

(S.) **BIGHAM, ENGLAR, JONES &
HOUSTON,**

(Bigham, Englar, Jones &
Houston)

Proctors for Libelants.

To: **R. C. Alley, Esq.,**

Lofton, Stokes & Calkins, Esqs.,

Messrs. Burlingham, Veeder, Clark & Hupper.,

Proctors for Respondent, **John S. Phipps.**

Received copy of the foregoing notice this 20th day of
October, 1936.

JNO. P. STOKES,

Of Proctors for Phipps.

**BOTTS' & FIELD & W. GERRY
MILLER,**

Proctors for George J. &
Clara Pilkington.

(Title Omitted.)

State of New York,

County of New York, ss.

Leonard J. Matteson, being duly sworn, deposes and
says:

I am a member of the firm of Bigham, Englar, Jones &
Houston, associated with Batchelor & Dyer, as proctors for
the libelants in the above entitled case.

This action is brought by some thirty-eight libelants against the respondents to recover damages for the total loss of forty yachts and a number of smaller vessels which were destroyed by fire while stored in the shed of the Pilkington Yacht Basin at Fort Lauderdale, Florida, on June 24, 1935. The libel alleges that the fire resulted from an explosion on board the yacht "Seminole", which occurred when two employees, agents and servants of the respondent, John S. Phipps, went on board the yacht "Seminole" by his authority and direction and negligently threw an open electric light knife switch in the engine room in the presence of an accumulation of gasoline fumes.

It is further alleged that the yacht "Seminole" was operated and controlled by the respondent, John S. Phipps, although owned and registered in the name of the Seminole Boat Company, a corporation, whose sole asset was the yacht "Seminole"; that the "Seminole" was used solely for the pleasure and convenience of the respondent, John S. Phipps and members of his family, and that the Seminole Boat Company had no bank account or funds for the upkeep or payment of expenses of the said yacht or the wages of the crew.

It is further alleged that the said yacht "Seminole" was laid up at the Pilkington Boat Yard by agents, servants and employees of the respondent, John S. Phipps, in a dangerous and unsafe condition, in that her tanks contained large quantities of gasoline, her gasoline pipes and valves were improperly and defectively installed, her gasoline valves not closed, and her electrical and lighting lines, switches and devices improper, defective and improperly installed.

Further, that the storage of the said yacht "Seminole" in the shed of the Pilkington Yacht Basin, in proximity with the yachts of your libelants which were stored there,

created serious danger of fire and conflagration, and placed the vessels and property of the libelants in danger of destruction.

The libel further alleges that on June 24, 1935, John S. Phipps, as owner of the "Iolanthe", sent Captain R. C. Abel, master of that vessel, and John Thomas, his employees, agents and servants, to the Pilkington Yacht Basin, with authority and instructions to board the yacht "Seminole" for the purpose of removing certain articles of personal property of the respondent and examining certain decorative work on the "Seminole" in order to arrange for its duplication on the respondent's yacht "Iolanthe"; that while on board the vessel R. C. Abel, in order to obtain light, entered the engine room, and, although the presence of gasoline vapor in the engine room was, or should have been apparent, and he was in fact warned thereof, negligently threw an open knife electric light switch, thus creating a spark which ignited the gas vapor in the engine room and caused the explosion. The accumulation of gas vapor in the engine room was due to the improper, defective and dangerous condition of the yacht. Abel was killed and John Thomas, who accompanied him, was badly injured. The fire caused by the explosion spread rapidly through the storage shed and in a short time destroyed all the vessels stored therein, including those of your libelants.

Negligence is alleged on the part of the respondent, John S. Phipps, in failing to maintain the yacht "Seminole" in a proper, safe and seaworthy condition in tendering her for storage with other vessels in the Yacht Basin, without draining all gasoline from her tanks and falsely representing that the gasoline had been drained from her tanks, in permitting her to be stored in the defective condition alleged, and in a dangerous and unsafe condition for storage with other vessels, and failing to permit in-

spection of the yachts by the operators of the Storage Basin; failing to disclose the dangerous and defective conditions; in sending his agents and servants aboard without disclosing to them or warning them, of the dangerous and defective conditions existing, and in that his agents and servants negligently threw the open knife electric switch in the presence of gasoline fumes and vapor, thereby causing the explosion, fire and conflagration which destroyed libelants' vessels.

The respondent's answer generally denies the existence of defective conditions, and denies knowledge and information as to the circumstances of the fire and the alleged acts of negligence.

The answer further denies that the respondent, John S. Phipps, operated or controlled the yacht "Seminole", and that the persons who delivered the vessel to the Pilkington Yacht Basin for storage and Captain Abel whose negligence directly caused the explosion were the respondent's agents and servants.

Libelants attached to their libel, in accordance with the Admiralty practice, interrogatories required to be answered by the respondent, John S. Phipps, under oath. The respondent has incorporated alleged exceptions in his answers to many of these interrogatories, and the remaining answers made to the other interrogatories are obviously evasive and subject to a motion to strike out as sham. However, from these answers, certain facts appear.

In the answer to Interrogatory 1 (d) respondent admits that the registered owner of the yacht "Seminole" on June 24, 1935, was Seminole Boat Company. In the answer to Interrogatory 4 (e), the respondent asserts that William Baker and Robert Schlappi, the men who delivered the

yacht "Seminole" to the Pilkington Yacht Basin for storage, "were not employed by respondent or on respondent's behalf, but, upon information and belief, were at some times employed by Seminole Boat Company".

In answer to Interrogatory 8, respondent states:

"Respondent was not the owner of the yacht Seminole. Any authority possessed by J. P. Reilly and the Palm Beach Company to act with reference to the Seminole flowed from the Seminole Boat Company, of which the respondent was *merely a stockholder.*" (Italics ours.)

A most significant admission is contained in the answer to Interrogatory 1 (g). The interrogatory is:

"1. Is it a fact that you

• • • • •

(g) That at and prior to June 24, 1935, all expenses, including wages of captain and crew, of the yacht Seminole, were paid by you or for your account? State fully extent of your direct or indirect payment of such expenses and the method followed on paying and providing for such expenses."

The answer follows:

"No. The expenses incurred on behalf of the yacht Seminole were paid by the Seminole Boat Company and periodically the sum of such payments was made good by the shareholders of that company in the proportion in which the shares held by each bore to the number of shares outstanding." (Italics ours.)

In spite of respondent's admissions, contained in the interrogatories and answers just quoted, that the respondent is a stockholder of the Seminole Boat Company, and that the corporation is merely an instrumentality for dividing the expense of operating the yacht "Seminole" among the stockholders of the corporation, respondent's answer states that he excepts to interrogatory 1 (e), which would require the respondent to state the number of shares of stock of that corporation outstanding and the number of shares standing in his name, the length of time such shares had been held, and the manner of their acquisition, the names of the other shareholders and the number of shares standing in the name of each; also particulars with respect to the respondent's interest in any corporation holding shares of stock of the Seminole Boat Company and any shares held by any individual for the respondent's account or in which he had any interest, on the ground that the information sought to be elicited is irrelevant and immaterial and respondent's answer fails to supply the information demanded.

The libelants in this case contend that the Seminole Boat Company is a dummy corporation, organized by the respondent, John S. Phipps, for his convenience in the management and operation of the yacht "Seminole"; that the said respondent is the sole or principal stockholder in said corporation and that the said respondent is responsible for the acts of said corporation as for the acts of his duly qualified and authorized agent. If the said John S. Phipps is not the sole and principal stockholder of said corporation, and there are other bona fide shareholders, libelants will contend that they also are liable in the same manner as the respondent, John S. Phipps, and the libelants will probably wish to amend their libel to include such stockholders as respondents in this action.

Respondent's answer already admits facts tending to support this contention.

Interrogatory 1 (e) is intended to elicit further facts which are also relevant.

Similarly, the other interrogatories excepted to and not answered by the respondent, John S. Phipps, are intended to elicit facts supporting libelants' theory that the respondent, John S. Phipps, was in actual management and control of the yacht "Seminole", and that the Seminole Boat Company, which the respondent attempts to set up as a screen for his personal activities and, in order to protect himself from the personal liabilities flowing from his interest in, and management and control of, the yacht "Seminole", was in fact merely his agent in the operation thereof. In this connection interrogatories 1 (a), 1 (b) and 1 (c) are relevant and material. These interrogatories require disclosure of the fact that, from 1923 until 1929, the yacht "Seminole" was registered in the name of John S. Phipps as owner thereof and during this period was converted by him from a steam to a motor yacht using gasoline for fuel. (The faulty manner in which this conversion was carried out was the cause of many of the defects and dangerous conditions at the time the "Seminole" was stored on which libelants rely as a basis for liability.) These facts appear from the official Government records on file in the Office of the Collector of Customs at Miami, Florida.

Temporary Consolidated Enrollment and Yacht License No. M-11 of the steam yacht "Seminole", filed at Miami, Florida, April 18, 1923, shows that John S. Phipps was registered as of that date as the sole owner of said vessel upon surrender of previous license, "property changed".

Temporary Consolidated Enrollment and Yacht License No. M-8 of the gas yacht "Seminole" filed at Miami, Florida, November 5, 1924, shows that John S. Phipps was at that time the sole owner thereof and that one of the reasons for the surrender of license M-11 and the issuance of a new license was "rig changed to gas".

This certificate continued in effect until the filing on February 16, 1929 of Permanent Consolidated Enrollment and Yacht License No. M-15 of the gas yacht "Seminole", in which Seminole Boat Company is shown to be the sole owner of said vessel, "property changed". This registry, according to the records, remained unaltered until subsequent to June 24, 1935.

In view of these facts, the answers to interrogatories 1 (a) and 1 (b) are obviously evasive.

Interrogatory 1 (d) requires the respondent to disclose the fact that, shortly prior to February 16, 1929, he caused the organization of Seminole Boat Company, a corporation of the State of Delaware, for the purpose of holding record title of the yacht "Seminole" and caused the yacht "Seminole" to be registered in the name of Seminole Boat Company, and that such registration continued to, and including, June 24, 1935.

Interrogatory 1 (h) requires the respondent to disclose the fact that the yacht "Seminole", when in operation, carried his personal yachting pennant; and interrogatory 1 (i) requires disclosure of the fact that the yacht "Seminole" was registered with one or more yacht clubs, fishing clubs or similar organizations, as the vessel of the respondent, John S. Phipps.

We submit that all of these interrogatories are pertinent, relevant and material, and that the libelants are entitled to full and direct answers thereof by the respondent.

Similarly, Interrogatories 9 (a), (b) and (c), requiring disclosure of the state of the funds or the bank account of the Seminole Boat Company, in which the respondent was a stockholder, particulars as to the books of account and transfer agent, and Interrogatory 10, requiring information as to whether shares of stock of the Seminole Boat Company have been bought, sold, or traded in, and, if so, where and by whom, are relevant and material in support of the theory on which libelants' causes of action are based and should in fairness be answered by the respondent.

Many of the respondent's answers to interrogatories are obviously evasive and evidently based on the subterfuge that all knowledge with respect to the yacht "Seminole" and all responsibility with respect to matters relating to the management and operation of that vessel belonged to the Seminole Boat Company, thus avoiding any obligation on the part of the respondent to furnish facts which are or should be within his knowledge. In view of the fact that the respondent, John S. Phipps, was the registered owner of the yacht "Seminole", according to Government records, from 1923 to 1929, and that during this period the "Seminole" was converted about 1924 from a steam to a motor gasoline yacht, and further, in view of the fact that the Seminole Boat Company is obviously, according to respondent's answers already given, merely a convenience for holding title to the yacht "Seminole" and distributing the expenses of maintenance among the stockholders of whom the respondent John S. Phipps is evidently the chief, the respondent's answers to Interrogatories 2, 3, 4 and 5, denying knowledge with respect to the equipment and arrangements of the yacht "Seminole", are obviously evasive. The information, if not immediately in the mind of the respondent, can readily be obtained by him and is subject to his call and control. Under the circumstances, we submit that the answers to these inter-

rogatories should be stricken out as sham and full and complete answers required.

Similarly, respondent's answers to interrogatories 6 (a), 6 (b), 6 (c), 6 (d) and 6 (e) are evidently based on the assumption that the respondent had no responsibility in connection with the storage of the yacht "Seminole" and that the entire responsibility lay with the Seminole Boat Company. Deponent is informed and believes that the respondent personally on one or more occasions visited the Pilkington Yacht Basin and discussed with the respondent, George J. Pilkington, the terms and arrangements for storage of the yacht "Seminole". Yet the respondent in answers 6 (a) and 6 (b) denies knowledge of these arrangements, evidently on the theory that he was acting as agent for the Seminole Boat Company in such discussions.

Respondent's answer to Interrogatory 7 (b) is believed to be a purely technical and evasive denial. The official government records of the Collector of Customs at Miami, Florida, show that on July 11, 1934 R. C. Abel was registered as Master of the yacht "Iolanthe", owned by the respondent, John S. Phipps, and that such designation continued in effect on June 24, 1935 (Consolidated Certificate of Enrollment and Yacht License M-2 and indorsements). Yet the respondent denies that Abel was in his employ in any capacity on June 24, 1935.

Deponent is informed that John Thomas will testify that he was employed by Abel as master of respondent's yacht "Iolanthe" to make certain rope work for the yacht "Iolanthe" to be duplicated from similar work existing on the yacht "Seminole" and that in connection with such employment he accompanied Abel upon his visit to the "Seminole" for the purpose of examining the rope work on that vessel. This is undoubtedly the fact, as it is the only explanation of Thomas' accompanying Abel at that

time. Under these circumstances it is submitted that respondent's answers to Interrogatories 7 (c) and 6 (d), denying the employment of Thomas and the authorization for Thomas to board the "Seminole" are evasions and sham and should be stricken out.

In view of the evasions and refusals of the respondent to supply facts relevant to the issues herein, deponent submits that the libelants are further entitled to all of the relief available to them under Rule 32 of the Admiralty Rules of the United States Supreme Court and the general equity powers of the admiralty Court for discovery of all documents which are, or have been, in the possession or power of the respondent John S. Phipps, or his agents or representatives, relating to the matters and questions at issue. In this connection it is submitted that the Seminole Boat Company and Palm Beach Company are agents and representatives of the respondent John S. Phipps and subject to such order.

As already pointed out, the Seminole Boat Company is not an active corporation and has no bank account. It is, according to admission of the respondent a mere convenient agency for the respondent and perhaps others for sharing the expense of managing and operating the yacht "Seminole". Deponent is informed and believes that all bills of the yacht "Seminole", including those for storage in the Pilkington Yacht Basin, were actually paid by Palm Beach Company by its own checks. It is, therefore, apparent that Palm Beach Company, equally with the Seminole Boat Company, was an agency of the respondent in paying the expenses of operation of the yacht "Seminole" and that full disclosure of the records of the Palm Beach Company as well as of the Seminole Boat Company is necessary and proper for development of the true facts with respect to the respondent's operation and control of the yacht "Seminole".

Libelants, therefore, pray for the following relief:

1. That the alleged exceptions of the respondent John S. Phipps to interrogatories 1 (c), 1 (d), 1 (e), 1 (h), 1 (i), 9 (a), 9 (b), 9 (c) and 10 be overruled and that the respondent be directed to give full and complete answers thereto.

2. That the libelants, in order to meet the evasions of the respondent, have leave to amend interrogatories 1 (a), 1 (b), 1 (f), 6 (a), 6 (b), 6 (d), 6 (e), 7 (b), 7 (c), 7 (d), 7 (e), 7 (f) and 8 as follows:

"1. Is it a fact that

(a) you purchased the yacht 'Seminole', then a coal burning steam vessel, in or about the year 1923? Give the date;

(b) you converted the yacht 'Seminole' into a motor yacht using gasoline for fuel in or about the year 1924; give the date;

(f) at and prior to June 24, 1935, the yacht 'Seminole' was maintained chiefly for the pleasure and convenience of yourself and members of your family and guests."

"6. Is it a fact

(a) that you, either personally or through your agent or representative, on your own behalf, or on behalf of Seminole Boat Company, or otherwise, made arrangements with George J. Pilkington for storage of the yacht 'Seminole' at the Pilkington Yacht Basin at Fort Lauderdale, Florida; if through an agent or representative, state who that agent or representative was and the extent of his authority. Give particulars and the substance of such arrangements.

(b) that it was pursuant to such arrangements that the yacht 'Seminole' was delivered to George J. Pilkington for storage with other yachts in the shed of the Pilkington Yacht Basin at Fort Lauderdale, Florida, on or about April 16, 1935;

(d) that the yacht 'Seminole' was so delivered by Captain William Baker and engineer Robert Schlappi;

(e) that Captain William Baker and engineer Robert Schlappi were employed by you, or on your behalf, or by Seminole Boat Company, in such or similar capacities on the yacht 'Seminole' at the time of the delivery of that vessel to Pilkington Yacht Basin for storage on or about April 16, 1935.

"7. Is it a fact

(b) that R. C. Abel on or prior to June 24, 1935 was employed by you, or on your behalf, as master of the yacht 'Iolanthe', or otherwise. State the nature and terms of such employment during the year 1935 and the date of termination thereof, if any. Was R. C. Abel master of the yacht 'Iolanthe' on June 24, 1935;

(c) that John Thomas had been employed by you, or by R. C. Abel, or by J. F. Riley, with authority on your behalf, to make certain rope work for the yacht 'Iolanthe' similar to work of this kind on the yacht 'Seminole'. If the foregoing statement is not correct, state the true circumstances of the employment of John Thomas.

(d) that R. C. Abel was directed or authorized by you, or by J. F. Riley, with authority on your behalf, or at your request, to take the said John Thomas on board the yacht 'Seminole' to inspect the rope work on that vessel. If the foregoing statement is not correct, state the true

facts and circumstances with respect to John Thomas' visit on board the 'Seminole' on June 24, 1935;

(e) that R. C. Abel was directed or authorized by you or by J. F. Riley with authority on your behalf or on behalf of Seminole Boat Company to go on board the yacht 'Seminole' for the purpose of removing certain fishing tackle or other personal property or equipment for your account and/or for other purposes. State the purposes;

(f) that J. F. Riley had authority from you or from Seminole Boat Company to write and give to R. C. Abel and did so write and give to R. C. Abel on or about June 24, 1935 a letter of authority reading substantially as follows:

'Captain Pilkington:

Please let Captain Abel take some equipment off the 'Seminole'.

J. F. RILEY."

"8. Is it a fact that J. F. Riley and/or Palm Beach Company had authority from you and/or for, or on behalf of, Seminole Boat Company

(a) to oversee generally all arrangements with respect to the yacht 'Seminole';

(b) to negotiate and make contracts for repairs and storage of the yacht 'Seminole';

(c) to employ officers or crew;

(d) to approve and pay bills for expenses;

(e) to authorize or restrict the entry of persons on board said vessel.

State the extent and scope of the duties, functions and authority of each and the source of such authority."

and that the respondent, John S. Phipps, be required to answer such amended interrogatories fully, fairly and completely under oath.

3. That the libelants have leave to propound additional interrogatories 1 (j), 1 (k), 1 (l) and 11 to be answered by the respondent John S. Phipps under oath as follows:

"1.

(j) Is it a fact that the yacht 'Seminole' was at all times available for use by you for your personal purposes without payment to Seminole Boat Company for the use thereof. If not, on what basis was the yacht 'Seminole' available for your use.

(k) State what method was used in dividing the time and use of the yacht 'Seminole' among the stockholders of the corporation.

(l) State which stockholder of Seminole Boat Company had last had the use of the yacht 'Seminole' prior to June 24, 1935 and the dates of such use. If such use was by or for guests of a stockholder of Seminole Boat Company, state the name of the stockholder and the names of the guests."

"11. State the following facts:

(a) date of transfer by you of title to the yacht 'Seminole' to Seminole Boat Company;

(b) consideration received by you from Seminole Boat Company for transfer of title of the yacht 'Seminole';

(c) if consideration consisted of shares of stock state the number of shares of stock of the said corporation and the proportion of the total shares of the said corporation outstanding represented by the issuance of these shares to yourself;

(d) distributions or dividends received by you from Seminole Boat Company since the incorporation of that company and the source of these dividends or distributions, if any;

(e) the amounts which you have paid to Seminole Boat Company as shareholder of that company to make good the expenses of the yacht 'Seminole', the dates of such payments and the proportion of the total of such expenses borne by you."

4. That the answers of the respondent John S. Phipps to interrogatories "2", "3", "4", "5", "6 (c)", "7 (c)" and "7 (d)" be stricken out as sham and that said respondent be required to answer said interrogatories anew, fully, fairly and completely, under oath.

5. That the libelants be granted an order requiring the respondent John S. Phipps, his agents or representatives, and Seminole Boat Company and Palm Beach Company, to make discovery on oath of any documents which are, or have been, in his or their possession or power relating to the ownership or operation of the yacht "Seminole", employment and payment of wages of officers or crew thereof, or of work, labor or services in connection therewith, and of the distribution, apportionment and making good of the expenses incurred on behalf of the said yacht "Seminole" by the shareholders of that Company,

including books of account, cash books, check books, ledgers, stock books, statements of account, debit notes and all other books and documents relating or pertaining thereto.

6. That the libelants be granted such other and further relief as to the Court may seem just.

LEONARD J. MATTESON.

Sworn to before me this 14th day of October, 1936.

FRANCIS L. GOGNAN,

(Seal)

Notary Public, Kings Co.

Clk's No. 424, Reg. No. 7073.

Cert. filed in New York Co.

Clk's No. 107, Reg. No. 7-G-56.

Certificate filed in Westchester Co.

Commission expires March 30, 1937.

On February 18th, 1937, an Order of Court was filed, which is in words and figures as follows:

84 ORDER ON INTERROGATORIES.

At a Stated Term of the United States District Court for the Southern District of Florida, Miami Division, held in

the Court Rooms thereof in the U. S. Court and Post Office Building, Miami, Florida, on the day of February, 1937.

Present:

Honorable John W. Holland, United States District Judge.

(Title Omitted.)

The libelants herein having moved this Court on the libel and interrogatories filed herein on or about February 29, 1936, and on the answer and answers to interrogatories filed herein by respondent John S. Phipps on or about May 5, 1936, and upon the affidavit of Leonard J. Matteson verified October 14, 1936, and upon all papers filed and proceedings had herein for an order overruling exceptions filed by the respondent John S. Phipps to certain interrogatories attached to the libel, permitting libelants to amend certain of the interrogatories attached to the libel and to propound additional interrogatories, and striking out certain of the respondent's answers as sham and requiring new answers to certain interrogatories, and further requiring the respondents John S. Phipps, Seminole Boat Company and Palm Beach Company to make discovery under oath of certain documents, and the said motion having duly come on to be heard and been argued before the Court on the 13th day of November, 1936, and the Court having heard Leonard J. Matteson, Esquire, of counsel for the libelants, in support thereof, and John P. Stokes, Esquire, of counsel for the respondent John S. Phipps, in opposition thereto, and due deliberation having been had, and the Court having indicated in writing its decision with respect to the relief prayed for, it is

Now, on motion of Messrs. Batchelor & Dyer and Messrs. Bigham, Englar, Jones & Houston, proctors for the libelants,

Ordered, as follows:

That interrogatories 1 (a), (b) and (f) attached to the libel be amended to read as follows:

"1. Is it a fact that

(a) you purchased the yacht 'Seminole' then, a coal burning steam vessel, in or about the year 1923? Give the date;

(b) you converted the yacht 'Seminole' into a motor yacht using gasoline for fuel in or about the year 1924; give the date;

(f) at and prior to June 24, 1935, the yacht 'Seminole' was maintained chiefly for the pleasure and convenience of yourself and members of your family and guests."

and that the respondent John S. Phipps do answer the said amended interrogatories as required by the rule.

That the exception of the respondent John S. Phipps to the first interrogatory 1 (d) be sustained with respect to the first part thereof, and overruled with respect to the second part thereof reading as follows:

"That on said date (February 16, 1929) you caused the yacht 'Seminole' to be registered in the name of Seminole Boat Company as record owner and that such registration continued to and including June 24, 1935."

and that respondent John S. Phipps be required to answer the part of the same so sustained as required by the rule.

That the exception of the respondent John S. Phipps to interrogatory 1 (e) be overruled as to the first and last sentences thereof and sustained as to the remaining parts of the said interrogatory, and that the respondent John S. Phipps do answer the first and last sentences thereof reading as follows:

"(e) That between April 1, 1935 and June 24, 1935 inclusive you were a stockholder of Seminole Boat Company. * * * * If any individual held shares of the Seminole Boat Company for your account, or if you had any interest in such shares, give particulars",

as required by the rule.

That the exceptions of the respondent John S. Phipps to interrogatories 1 (h) and (i) reading as follows:

"(h) That the yacht 'Seminole' when in operation carried your personal yachting pennant.

(i) That the yacht 'Seminole' was registered with one or more yacht clubs, fishing clubs or similar organizations as your vessel"

be overruled and that the respondent John S. Phipps do answer the same as required by the rule.

That the respondent John S. Phipps be, and hereby is, directed to answer fully interrogatory #3, with the exception of the last sentence thereof reading as follows:

"supply blueprint, plan or diagram of the same".

That interrogatories 6 (a), (b) and (d) be, and hereby are, amended to read as follows:

"6. Is it a fact

(a) that you either personally or through your agent or representative, on your own behalf, or on behalf of Seminole Boat Company, or otherwise, made arrangements with George J. Pilkington for storage of the Yacht 'Seminole' at the Pilkington Yacht Basin at Fort Lauderdale, Florida; if through an agent or representative, state who that agent or representative was and the extent of his authority. Give particulars and the substance of such arrangements.

(b) that it was pursuant to such arrangements that the yacht 'Seminole' was delivered to George J. Pilkington for storage with other yachts in the shed of the Pilkington Yacht Basin at Fort Lauderdale, Florida, on or about April 16, 1935;

(d) that the yacht 'Seminole' was so delivered by Captain William Baker and engineer Robert Schlappi"

and that the respondent John S. Phipps do answer the interrogatories as so amended as required by the rule.

That the libelants' application for leave to amend interrogatory 6 (e) be, and the same hereby is, denied and that the respondent do answer said interrogatory as originally propounded.

That interrogatories 7 (b), (c) and (d) be, and the same hereby are, amended to read as follows:

"7. Is it a fact

(b) that R. C. Abel on or prior to June 24, 1935 was employed by you, or on your behalf, as master of the yacht 'Iolanthe', or otherwise. State the nature and terms of such employment during the year 1935 and the date of termination thereof, if any. Was R. C. Abel master of the yacht 'Iolanthe' on June 24, 1935.

(c) that John Thomas had been employed by you, or by R. C. Abel, or by J. F. Riley, with authority on your behalf, to make certain rope work for the yacht 'Iolanthe' similar to work of this kind on the yacht 'Seminole'. If the foregoing statement is not correct, state the true circumstances of the employment of John Thomas.

(d) that R. C. Abel was directed or authorized by you, or by J. F. Riley, with authority on your behalf, or at your request, to take the said John Thomas on board the yacht 'Seminole' to inspect the rope work on that vessel. If the foregoing statement is not correct, state the true facts and circumstances with respect to John Thomas' visit on board the 'Seminole' on June 24, 1935."

and that the respondent John S. Phipps do answer the said interrogatories as amended as required by the rule.

• That Libelants' application for leave to amend interrogatories 7 (e) and (f) be, and the same hereby is, denied and that the respondent John S. Phipps do answer the said interrogatories, as originally propounded.

That libelants' application for leave to amend interrogatories 8 (a), (b), (c), (d) and (e) be, and the same is hereby, denied and that the respondent John S. Phipps do answer the said interrogatories as originally propounded.

That the exceptions of the respondent John S. Phipps to interrogatories 9 (a), (b), (c) and 10 be, and the same

hereby are, sustained and that the respondent John S. Phipps need not answer the said interrogatories.

That the motion of the libelants to strike out the answers of the respondent John S. Phipps as to interrogatories 2, 3, 4, 5, 6 (c), 7 (c) and 7 (d) is denied.

That the respondent's motion for leave to propound additional interrogatory 1 (j) as follows:

"1. (j) Is it a fact that the yacht 'Seminole' was at all times available for use by you for your personal purposes without payment to Seminole Boat Company for the use thereof. If not, on what basis was the yacht 'Seminole' available for your use."

be, and the same hereby is, granted and that the respondent John S. Phipps do answer the said additional interrogatory as required by the rule.

That the motion of the libelants for leave to propound additional interrogatories 1 (k) and 1 (l) be, and the same hereby is, denied.

That the motion of the libelants for leave to address additional interrogatories as follows:

"11. State the following facts:

(a) date of transfer by you of title to the yacht 'Seminole' to Seminole Boat Company;

(b) consideration received by you from Seminole Boat Company for transfer of title of the yacht 'Seminole';

(c) if consideration consisted of shares of stock state the number of shares of stock of the said corporation and

the proportion of the total shares of the said corporation outstanding represented by the issuance of these shares to yourself;

(d) distributions or dividends received by you from Seminole Boat Company since the incorporation of that company and the source of these dividends or distributions, if any;

(e) the amounts which you have paid to Seminole Boat Company as shareholder of that company to make good the expenses of the yacht 'Seminole', the dates of such payments and the proportion of the total of such expenses borne by you."

be, and the same hereby is, granted and that the respondent John S. Phipps do answer the aforesaid interrogatories as required by the rule.

That the motion of the libelants for an order requiring the respondent John S. Phipps, Seminole Boat Company and Palm Beach Company to make discovery on oath of certain documents be, and the same hereby is, denied in accordance with the Court's opinion filed in the papers of the cause on the 3rd of February, 1937, and it is further

Ordered that the respondent John E. Phipps do file and serve his answers under oath to interrogatories as above directed within thirty days from the date of service of this order with notice of the entry thereof upon proctors for the respondent, John S. Phipps, Messrs. Loftin, Stokes & Calkins.

This February 18th, 1937, at Miami, Florida.

JOHN W. HOLLAND,

United States District Judge.

On March 27th, 1937, respondent, John S. Phipps, filed his answers to the amended and additional interrogatories propounded by libelants, which is in words and figures as follows:

**RESPONDENT JOHN S. PHIPPS' ANSWERS TO
AMENDED AND ADDITIONAL INTERROGA-
TORIES PROPOUNDED BY LIBELANTS.**

90

(Title Omitted.)

Answers to Interrogatories.

1. (a) No. Respondent Phipps purchased a one-half interest in the Yacht Seminole, then a coal burning vessel, on February 24, 1915.

(b) While the Yacht Seminole was jointly owned by Henry C. Phipps and John S. Phipps it was converted from steam power to gasoline motor power in the latter part of 1921 and the early part of 1922.

(d) No, the Seminole Boat Company purchased Yacht Seminole from Henry C. Phipps and John S. Phipps in November, 1928. Thereafter, Seminole Boat Company caused said yacht to be registered in its name and said registration continued to and including June 24, 1935.

(e) Between April 1, 1935, and June 24, 1935, John S. Phipps was a stockholder of Seminole Boat Company, owning one-half of the outstanding shares thereof. He had no interest in any other shares.

(f) No.

(h) Since the purchase of the yacht by Seminole Boat Company, the Yacht Seminole has not carried respondent's personal yachting pennant.

(i) The Seminole was registered at only one club; until 1921 it was registered in the name of Henry C. Phipps; from 1922 to 1932 it was registered in the name of John S. Phipps; since 1932 it has not been registered at any club.

(j) The Yacht Seminole was available for respondent's personal purposes at times mutually convenient to the stockholders except when the yacht was, or was about to be, on charter. Respondent paid no hire for the use of the Seminole but paid all operating expenses when the Seminole was being used solely for his personal purposes.

3. Respondent does not know the pipeline layout and connections from gasoline tanks to carburetors on the Seminole, or the locations of valves, shutoffs, filling lines and vents. Respondent does not know whether it was possible to draw off completely all gasoline or other liquids from the tanks. Respondent does not know whether any changes in such arrangements were made subsequent to the Seminole's original conversion from steam to gasoline.

6. (a) Respondent made no arrangements with respondent Pilkington, either personally or through any agent of his, for the storage of the Seminole at the Pilkington Yacht Basin. Upon the termination of a cruise at Miami in April, 1935, respondent believes that the yacht proceeded to Pilkington's Yacht Basin to be stored pursuant to arrangements made between Seminole Boat Company and said Pilkington.

(b) Respondent believes that the Yacht Seminole was delivered for storage at the Pilkington Yacht Basin on or about April 16, 1935, pursuant to the aforesaid arrangement between Seminole Boat Company and respondent Pilkington, which was not made by respondent.

(d) Respondent was not on board the Seminole when she was delivered at the Pilkington Yacht Basin in April, 1935, but is informed and believes that she was navigated from Miami to the Pilkington Yacht Basin by Captain William Baker, the engines being in charge of Engineer Rollie Schlappi, and was there placed by them in the custody of respondent Pilkington.

(e) Baker and Schlappi were not employed by respondent or on his behalf. Upon information and belief they were employed by Seminole Boat Company.

7. (b) From time to time, prior to June 24, 1935, R. C. Abel was in respondent's employ as master of the Yacht Iolanthe and otherwise. On June 24, 1935, Yacht Iolanthe was not in service and R. C. Abel was not employed as her master. R. C. Abel was in respondent's employ at a monthly wage working generally in connection with the respondent's fishing boats except upon occasions when his services were employed by another who paid his wages for such period. His services were employed by the Seminole Boat Company on June 24, 1935.

(c) No. John Thomas had contracted to make a rope net similar to one on the Seminole.

(d) No. Upon information and belief, it was upon his own initiative that R. C. Abel took John Thomas with him to the Seminole on June 24, 1935.

(e) Not by respondent. Respondent does not know as to Riley.

(f) Riley had no such authority from respondent; respondent does not know the facts as to the letter.

8. (a) No.

(b) No.

(c) No.

(d) No.

(e) No.

11. (a) Henry C. and John S. Phipps transferred title to the Yacht Seminole to Seminole Boat Company in November, 1928.

(b) The purchase price of the Seminole was paid in stock.

(c) Originally 40 shares of stock were issued. 20 to respondent and 20 to Henry C. Phipps. On June 24, 1935, respondent owned one-half of the issued shares.

(d) There have been none.

(e) Prior to June 24, 1935, respondent paid the following amounts on the dates mentioned, the percentages set forth being respondents proportion of the total:

Date	Amount	Percent
Oct. 31, 1929	\$ 249.27	48.5%
Oct. 31, 1929	1110.07	50%
Dec. 31, 1929	3496.69	87.7%
Apr. 30, 1930	1877.93	50%
July 31, 1930	1701.19	50%
Dec. 31, 1930	1618.53	50%
June 30, 1931	3098.14	50%

Date	Amount	Percent
June 30, 1931	374.70	50%
June 30, 1932	896.49	50%
Dec. 31, 1932	\$1158.32	50%
June 30, 1933	478.78	50%
Dec. 30, 1933	372.30	50%
Dec. 31, 1934	1022.38	50%
Feb. 20, 1935	369.68	50%
June 22, 1935	1224.91	50%

R. C. ALLEY,
LOFTIN, STOKES & CALKINS,
BURLINGHAM, VEEDER,
CLARK & HUPPER,
Proctors for Respondent,
Phipps.

By JNO. P. STOKES.

State of Florida,
Southern District of Florida, ss.

John S. Phipps, being duly sworn, says that he is one of the respondents herein; that he has read the foregoing answers to interrogatories and that the same are true to the best of his knowledge, information and belief.

JOHN S. PHIPPS.
RCA.

Sworn to before me this 26th day of March, 1937.

BELLE WHIDDEN.

(N. P. Seal)

Notary Public, State of Florida at Large.

My Commission Expires June 26, 1939.

On March 15th, 1937, the libelants filed their Answers to Interrogatories propounded by respondent, John S. Phipps, and attached to his answer, which is in words and figures as follows :

THE ANSWERS OF THE LIBELANTS TO INTERROGATORIES PROPOUNDED BY THE
RESPONDENT JOHN S. PHIPPS ATTACHED TO RESPONDENT'S ANSWER.

(Title Omitted.)

Answers to Interrogatories 1, 2 and 4.

Name of Vessel	Interrogatory 1— Overall Dimensions (Approximate)	Interrogatory 2— Motive Power	Interrogatory 4— Date of Delivery at Pilkington's Yacht Basin
Yacht "Mahelaudor"	60'	Gasoline	May 23, 1935
Fishing Boat	30'	Gasoline	May 23, 1935
Yacht "Circe"	30'	Gasoline	Apr. 18, 1935
Yacht "Fra Mar II"	38'	Gasoline	June 8, 1935
Yacht "Lady of the Wye"	36'	Gasoline	Feb. 28, 1935
Yacht "Bonetta"	35'	Gasoline	Apr. 19, 1935
Yacht "Miown"	38'	Gasoline	May 14, 1935
Yacht "Lee Hann"	28'	Gasoline	Mar. 24, 1935
Yacht "V 20165"	38'	Gasoline	Apr. 21, 1935
Yacht "Amberjack"	30'	Gasoline	Apr. 7, 1935
Yacht "Valentine"	35'	Gasoline	May 4, 1935
Yacht "Sergeantic"	54'6"	Gasoline	Jan. 31, 1934
Yacht "Sea Dog"	32'	Gasoline	Jan. 31, 1934

Name of Vessel	Interrogatory 1— Overall Dimensions (Approximate)	Interrogatory 2— Motive Power	Interrogatory 4—	
			Date of Delivery at Pilkington's Yacht Basin	
Yacht "Lieutenant"	38'	Gasoline	May 31, 1935	
Yacht "Oasis"	54'	Gasoline	May 3, 1935	
Yacht "Desert"	28'	Gasoline	June 14, 1935	
Yacht "Sea Brist"	29'	Gasoline	Apr. 16, 1935	
Yacht "Catchie"	38'	Gasoline	May 24, 1935	
Yacht "My Pal Ida K"	24'	Gasoline	May 7, 1935	
Yacht "V 23487"	21'	Gasoline	Mar. 31, 1935	
Yacht "Kaco Tene"	56'	Gasoline	Apr. 29, 1935	
Yacht "Acushla II"	65'	Gasoline	May 19, 1935	
Yacht "Ernco"	21'	Gasoline	Mar. 31, 1935	
Yacht "Riposo"	52'	Gasoline	Feb. 21, 1935	
Yacht "Agnes"	28'	Gasoline	May 10, 1934	
Yacht "Autogo IV"	21'	Gasoline	Mar. 31, 1935	
Yacht "Patsy"	42'	Gasoline	Apr. 1, 1935	
Sea Skiff	26'	Gasoline	Apr. 1, 1935	
Yacht "Scimitar VI"	30'	Gasoline	Apr. 30, 1935	
Yacht "George M"	35'	Gasoline	May 7, 1935	
Yacht "Sancho"	26'	Gasoline	May 15, 1935	
Yacht "Lassen"	43'	Gasoline	Mar. 29, 1935	
Yacht "Vagabondia II"	28'	Gasoline	June 16, 1935	

Yacht "Margo"	42'	Gasoline	Apr. 14, 1935
Yacht "Rosecliff II"	65'	Gasoline	May 10, 1935
Yacht "Mikar"	32'	Gasoline	May 19, 1935
Yacht "Vagabond"	45'	Gasoline	Apr. 23, 1935
Yacht "Evelyn R"	50'	Gasoline	June 5, 1935
Yacht "San Cristobal"	50'	Gasoline	May 23, 1935
Yacht "Blue Lagoon"	50'	Gasoline	June 23, 1935
Yacht "Mystic"	55'	Gasoline	Apr. 5, 1935
Houseboat	45'	None	Mar. 16, 1935
Yacht "Tropic"	88'	Gasoline	Jan. 31, 1935
Yacht "Blue Runner"	32'	Gasoline	May 9, 1935
Yacht "Adieu"	43'	Gasoline	June 5, 1935
Yacht "Nancy B"	40'	Gasoline	June 5, 1935

Answer to Interrogatory 3 (a)—capacity gasoline tanks: Libelants have no knowledge or information as to the capacity or approximate capacity of the gasoline tanks, and respectfully submit that such capacity is not germane to their cause of action.

Answer to Interrogatory 3 (b)—amount of gasoline in tanks of each vessel when delivered for storage at the Pilkington Yacht Basin: On information and belief, the gasoline had been removed from all the boats of libelants except the Yacht "Mystic", and that yacht had two tanks, one of which was wholly full of gasoline, and the other partially full. All of the gasoline was removed from the tank partially full, but none removed from the tank wholly full.

Answer to Interrogatory 5:

(a) Libelants do not know and have no means of knowledge.

(b) To the best of libelants' knowledge, the engines were not operated in any of libelants' vessels on June 24, 1935, prior to the time of the explosion on the "Seminole", as it was the strict rule of the Pilkington Yacht Basin that the engines of vessels should not be operated while in the storage shed and all gasoline had been removed from libelants' vessels, except the yacht "Mystic" as shown in answer to Interrogatory 3 (b).

Answer to Interrogatory 6:

Libelants are unable to furnish a diagram or plan showing the location of the vessels referred to in the First Article of the libel and the location of the yacht "Seminole" within the Pilkington Yacht Basin, shed or basin

at the time of the explosion on the "Seminole", as the vessels were placed in the shed by the respondent Pilkington.

State of Florida,
County of Dade, ss.

Benjamin F. McCoy, being duly sworn, deposes and says that he is President of McCoy Brothers Indian River Navigation Company, one of the libelants named in the foregoing libel; that he has read the foregoing answers to interrogatories and that the same are true to the best of his knowledge, information and belief.

BENJAMIN F. McCOY.

Subscribed and sworn to before me this 8th day of March, A. D. 1937.

MILDRED M. SMITH,

(Notary's Seal)

Notary Public, State of Florida at large.

My Commission Expires: 2/10/40.

On March 18th, 1938, respondent, John S. Phipps, filed additional interrogatories addressed to libelants and respondent, George J. Pilkington, which is in words and figures as follows:

**INTERROGATORIES PROPOUNDED BY RESPONDENT,
JOHN S. PHIPPS, TO LIBELANTS AND RESPOND-
ENT, GEORGE J. PILKINGTON.**

101

(Title Omitted.)

To: Messrs. Batchelor & Dyer,
Messrs. Bigham, Englar, Jones & Houston,
Proctors for Libelants.

Messrs. Botts & Field,
Proctors for Respondent Pilkington.

Sirs:

Please Take Notice that upon all the pleadings and proceedings heretofore had herein, and upon the annexed affidavit of R. C. Alley, sworn to on March 14, 1938, Respondent John S. Phipps will present to the Hon. John W. Holland, as United States District Judge, at his office in the United States Court and Post Office Building, Miami, Florida, on March 18, 1938, at 10:15 o'clock, A. M., or as soon thereafter as counsel can be heard, a motion for an order requiring Libelants, Charles Coryell, et al., and Respondent George J. Pilkington to answer, upon oath, within two weeks of the entry of an order upon said motion, the following interrogatories propounded by Respondent John S. Phipps for the purpose of clarifying the allegations of the libel and petition and for the purpose of narrowing the issues to be tried:

Interrogatories Addressed to the Libelants.

1. State fully in what respect it will be claimed that the gasoline pipes and valves of the yacht Seminole were improperly and defectively installed, as alleged in the fifth article of the libel.

2. State particularly which gasoline valves it will be claimed were not closed, as alleged in the fifth article of the libel.

3. State fully in what respect it will be claimed that the electrical and lighting lines, switches and devices were improper, defective and improperly installed, as alleged in the fifth article of the libel.

4. State fully in what respect it will be claimed that Respondent Phipps was negligent in other respects, as alleged in the fifth article of the libel.

5. State fully in what respect it will be claimed that improper and defective installation of the gasoline pipes and valves on the yacht Seminole resulted in an accumulation of gas vapor in the engine room, as alleged in the sixth article of the libel.

6. State particularly which gasoline valves it will be claimed were not closed, resulting in an accumulation of gas vapor in the engine room, as alleged in the sixth article of the libel.

7. State particularly which valve or valves it will be claimed permitted gasoline to leak, as alleged in the sixth article of the libel.

8. State fully in what respect it will be claimed that gasoline leaked into the bilge of the yacht "otherwise"

than through open valves, as alleged in the sixth article of the libel.

9. State fully in what respect it will be claimed that Respondent Phipps failed to maintain the yacht Seminole in proper, safe and seaworthy condition, as alleged in the seventh article of the libel.

10. State whether or not it will be claimed that Respondent Phipps personally represented to the operators of the Pilkington Yacht Basin that the tanks of the yacht Seminole had been drained of all gasoline when she was tendered for storage at that yard, as alleged in the seventh article of the libel; if not personally, identify the individual who it will be claimed made such representation.

11. State fully in what respect it will be claimed that the Seminole's gasoline pipes and valves were improper, defective and improperly installed; which of her gasoline valves it will be claimed were not closed; in what respect it will be claimed that the electrical and lighting lines, switches and devices were improper, defective and improperly installed; and in what respect the said yacht was in other respects in a dangerous and unsafe condition for storage with other vessels, as alleged in the seventh article of the libel.

12. State in what respects it will be claimed that Respondent Phipps' agents and servants negligently caused an explosion on the yacht Seminole, as alleged in the seventh article of the libel.

13. State fully in what other respects it will be claimed that Respondent Phipps was negligent.

Interrogatories Addressed to Respondent Pilkington.

1. State whether or not it will be claimed that Respondent Phipps personally instructed Respondent Pilkington not to go into the engine room of the Seminole or turn over her engines by hand; if it will be claimed that such instructions were given by an authorized agent of respondent Phipps, identify such agent; if it is claimed that such instructions were given by respondent Phipps in person or by an authorized agent, state where and on what date such instructions are claimed to have been given.

2. State whether the agreements for the storage of the Seminole alleged in the fifth article of the petition were oral or in writing; if oral, state fully the substance thereof; if in writing, attach full and true copies thereof to your answers hereto.

3. State whether it will be claimed that the agreements for the storage of the yacht Seminole alleged in the fifth article of the petition are claimed to have been made by respondent Phipps in person; if not in person, identify the individual who it will be claimed acted on his behalf.

4. State whether or not it will be claimed that the agreement and warranty alleged in the fifth article of the petition was express or implied, oral or in writing; if express and oral, identify the person who it will be claimed made said agreement and warranty; if express and in writing, attach a full and true copy to your answers to these interrogatories.

5. State whether or not it will be claimed that respondent Phipps either personally or by any agent or representative expressly warranted that if gasoline was left in the tanks of said vessel, all drains, valves and outlets through which gasoline might be drawn or flow out of said tanks would be tightly and securely closed so that gasoline could not drain out into the bilge of said vessel,

and that said drains and outlets would be kept tightly closed; if by an agent or representative, identify him.

6. State whether it will be claimed that respondent Phipps personally represented to respondent Pilkington that the yacht Seminole was and had been in all respects in a safe and proper condition for storage, as alleged in the fifth article of the petition; if it is not claimed that respondent Phipps personally so represented, identify the person or persons who it will be claimed so represented on respondent Phipps' behalf.

7. State fully in what respect it will be claimed that the gasoline pipes and valves on the yacht were improper, defective and improperly installed, as alleged in the fifth article of the petition.

8. State which gasoline valves it will be claimed were not closed, as alleged in the fifth article of the petition.

9. State fully in what respect it will be claimed that the electrical and lighting lines, switches and devices were improper, defective and improperly installed, as alleged in the fifth article of the petition.

10. State fully in what other respects it will be claimed that the yacht Seminole was in a dangerous and unsafe condition, as alleged in the fifth article of the petition.

11. State which gasoline valves on or attached to the tanks and fuel lines of the Seminole it will be claimed Baker and Schlappi negligently failed to close or to close properly, as alleged in the fifth article of the petition.

12. State whether or not the warning alleged to have been given to R. C. Abel on or about the time when he entered the engine room of the Seminole on June 24, 1935, of

the presence therein of gasoline vapors is claimed to have been given by respondent Pilkington or any agent, servant or employee of his; if not, by whom.

13. Identify the certain electric light knife switch located in the engine room of the Seminole which it is alleged in the fifth article of the petition R. C. Abel negligently and carelessly operated and manipulated.

14. State in what respect it will be claimed that the condition of valves and gasoline pipes of the Seminole was improper and defective, resulting in an accumulation of gasoline vapor in the engine room, as alleged in the fifth article of the petition.

15. State fully in what respects it will be claimed that respondent Phipps failed to maintain the yacht Seminole in a proper, safe and seaworthy condition, as alleged in the sixth article of the petition.

16. State fully in what respect it will be claimed that the Seminole's gasoline pipes and valves were improper, defective and improperly installed; which of her gasoline valves it will be claimed were not closed; in what respect it will be claimed that the electrical and lighting lines, switches and devices were improper, defective and improperly installed; and in what other respects it will be claimed that the yacht was in a dangerous and unsafe condition, as alleged in the sixth article of the petition.

Dated, Miami, Florida, March 14th, 1938.

R. C. ALLEY,

LOFTIN, STOKES & CALKINS,
and BURLINGHAM, VEEDER,
CLARK & HUPPER,

By JNO. P. STOKES,

Proctors for Respondent John
S. Phipps.

(Title Omitted.)

State of Florida,
County of Palm Beach, ss.

R. C. Alley, being duly sworn, deposes and says:

I am one of the proctors for respondent John S. Phipps in the above entitled suit in admiralty, and I am familiar with the pleadings and proceedings heretofore had herein.

The libel alleges that on or about June 24, 1935, an explosion and fire occurred on the yacht Seminole due to the negligence of respondents Pilkington and Phipps, as the result of which libelants' vessels were destroyed or seriously damaged. Answers have been filed by both respondents, each denying negligence on his part, and respondent Pilkington has filed a petition purporting to assert a claim over against respondent Phipps. The case is at issue and has been set for trial on May 30, 1938.

The allegations of negligence in the libel and in the petition are in many instances extremely broad and general and do not sufficiently apprise respondent Phipps of the charges of negligence against him in the following particulars:

Both the libel and petition allege generally and without particularity that gasoline pipes and valves were improperly and defectively installed. Respondent Phipps does not know which pipes or which valves it will be claimed were improperly and defectively installed, and in view of the large number of pipes and valves on the Seminole desires to be specifically informed of the charges of negligence in respect of them.

Both the libel and petition allege that some valves were not closed, as the result of which gasoline escaped, causing a gas vapor which exploded. Respondent Phipps does not know what valves it will be claimed were not closed, and in view of the large number of valves in the Seminole desires to be specifically informed of the charge of negligence in respect of the valves.

Both the libel and petition allege that the electrical and lighting lines, switches and devices were improper, defective and improperly installed. Respondent Phipps does not know which of these it will be claimed were improper, which defective and which improperly installed, and in view of the large number of electrical and lighting lines, switches and devices desires to be specifically informed of the charge of negligence in respect of them.

Both the libel and petition allege that respondent Phipps was negligent in other respects. Respondent Phipps desires to be specifically informed of the charges of negligence covered by these allegations.

Both the libel and petition allege that improper and defective installation of gasoline pipes and valves caused the escape of gasoline and the accumulation of gasoline vapor. Respondent Phipps does not know in what respect it will be claimed that this installation was improper or defective, and desires to be specifically informed of the charge of negligence in respect of this allegation.

Both the libel and petition allege that respondent Phipps failed to maintain the yacht Seminole in proper, safe and seaworthy condition. Respondent Phipps does not know in what respect it will be claimed that the condition of the yacht was improper, unsafe or unseaworthy, and desires to be specifically informed of the charges of negligence in respect of this allegation.

The libel alleges that respondent Phipps falsely represented to the operators of the Pilkington Yacht Basin that the tanks of the Seminole had been drained of all gasoline when she was tendered for storage at that yard. Respondent Phipps does not know whether it will be claimed that he personally made such a representation, or whether some other individual who it will be claimed was an agent or servant of his made such representation, and desires to be specifically informed of the charge in this respect.

The petition alleges that respondent Phipps instructed respondent Pilkington not to go into the engine room of the yacht Seminole. Respondent Phipps does not know whether it will be claimed that he personally gave such instructions, or whether it will be claimed that such instructions were given by some person who it will be claimed was a servant or agent of his, and desires to be specifically informed of the charge in this respect.

The petition alleges that the yacht Seminole was stored at the Pilkington Yacht Basin pursuant to agreements made between Pilkington and Phipps, and that by said agreement, Phipps made certain warranties with reference to the Seminole. Respondent Phipps does not know whether it will be claimed that said agreements and warranties were made personally by him or by some person who it will be claimed was an agent or servant of his, and desires to be specifically informed of the charge in this respect.

With further reference to said warranties, the petition fails to allege whether it will be claimed that the asserted warranties were express or implied, oral or in writing, and respondent Phipps desires to be specifically informed of the charge in this respect:

The petition alleges that respondent Phipps represented to respondent Pilkington that the yacht Seminole was and had been in all respects in a safe and proper condition for storage. Respondent Phipps does not know whether it will be claimed that the aforesaid representation was made by him personally or by some person who it will be claimed was an agent or servant of his, and desires to be specifically informed of the charge in this respect.

The petition alleges that a warning was given to R. C. Abel of the presence in the engine room of the Seminole of gasoline vapor at or about the time he entered said engine room prior to the explosion. Respondent Phipps does not know by whom it will be claimed such warning was given, and desires to be informed of the charge in this respect.

The petition alleges that said Abel entered the engine room of the Seminole and negligently and carelessly operated and manipulated "a certain electric light knife switch" located therein. Respondent Phipps does not know which of the many electric light switches located in the Seminole's engine room it is claimed Abel negligently and carelessly operated and manipulated, and desires to be informed as to which it will be claimed Abel so operated and manipulated.

Deponent verily believes that respondent Phipps cannot adequately prepare for trial or safely proceed to trial in this suit without being fully informed in the matters aforesaid, and that he is entitled to be so informed by propounding interrogatories to the libelants and to the petitioner and receiving from them verified answers to such interrogatories.

The allegations of the libel and petition are extremely broad, and it will require considerable time of this Court

and of the parties involved to try all the issues of fact that might be raised under the pleadings herein. More than two and one-half years have elapsed since the explosion and fire alleged in the libel and petition, and the libelants and petitioner have had ample time to formulate their claims specifically. In order to narrow the issues to be presented at the trial and to save the time of the Court and the parties to this suit, respondent Phipps desires to have the claims against him more specifically stated.

Wherefore, deponent prays that an order be made requiring the libelants and the respondent-petitioner Pilkington to answer under oath within two weeks of the entry of an order upon this motion the interrogatories set forth in the notice of motion to which this affidavit is annexed.

R. C. ALLEY.

Subscribed and sworn to before me this March 14th, 1938.

BELLE WHIDDEN,

(Seal)

Notary Public, State of Florida
at Large.

My Commission expires: June 26, 1938.

State of Florida,
Dade County.

James Hathaway, being first duly sworn, says that he is employed in the office of Loftin, Stokes & Calkins, Attorney at Miami, Florida, that on March 14, 1938, he served the foregoing notice and interrogatories on Messrs. Batchelor & Dyer, attorneys, by leaving a true and correct copy of the same at the office of the said attorneys, in the Ingraham Building, with Mildred Smith; and further served said notice and interrogatories on March 14, 1938, on Messrs. Botts & Field, Attorneys, by leaving a true

and correct copy of the same at the office of the said attorneys, in the Biscayne Building, Miami, Florida, with Marjorie Varner.

(S.) JAMES HATHAWAY.

Sworn to and subscribed before me this 15 day of March, 1938.

(S.) NELL SMITH nee NELL BRANNEN,

(Notarial Seal)

Notary Public, State of Florida.

My Commission expires: Nov. 13, 1940.

On March 18th, 1938, an Order of Court was filed, which is in words and figures as follows:

Copy.

ORDER REQUIRING LIBELANTS AND RESPONDENT PILKINGTON TO ANSWER INTERROGATORIES.

112

(Title Omitted.)

This cause, after due notice, came on for hearing before me this 18th day of March, 1938, on the application of Respondent Phipps by notice and motion dated March 14, 1938, for leave to propound certain interrogatories to the Libelants and the Respondent Pilkington, and no objection having been made to said motion, it is

Ordered that the Libelants herein answer fully, under oath, within thirty days of the date hereof, the thirteen

interrogatories set forth in Respondent Phipps' notice and motion dated March 14, 1938; and it is

Further Ordered that the Respondent Pilkington answer fully, under oath, within thirty days of the date hereof, the sixteen interrogatories set forth in Respondent Phipps' notice and motion dated March 14, 1938.

Ordered and Done at Miami, Florida, this March 18, 1938.

JOHN W. HOLLAND,
District Judge.

On May 2nd, 1938, libelants filed their answers to the additional interrogatories propounded by respondent, John S. Phipps, which is in words and figures as follows:

113 ANSWERS TO INTERROGATORIES.

(Title Omitted.)

Libelants, Charles Coryell, et al., answering the further interrogatories addressed to libelants by authority of order dated March 18, 1938, state that the occurrence of an explosion and fire on the yacht "Seminole" on June 24, 1935 at the Pilkington Shipyard, which resulted in the destruction of libelants' vessels and property was such an occurrence as could not and would not have taken place without negligence on the part of the respondent John S. Phipps, his agents and servants, and that such occurrence creates a presumption that the losses thereby resulting were due to the negligence of the respondent Phipps and were *res ipsa loquitur*. Libelants further state that they had no opportunity for examination or inspection of

the yacht "Seminole" prior to the said explosion and that such information as they have been able to obtain up to this time is principally based on such an inspection as it has been possible to make of the wreckage of the said vessel. The facts as to the conditions on board the yacht "Seminole" prior to the disaster are, or should be, fully in the possession of or known to the respondent and are not fully in the possession of or known to libelants. Libelants are, therefore, not in a position to answer the interrogatories of the respondent in other than general terms. Libelants, nevertheless, answering the interrogatories as fully as they are able to do at this time, answer as follows:

1. Libelants state that it will be claimed that the gasoline pipes and valves of the yacht "Seminole" were improperly and defectively installed in that the installation permitted gasoline and gasoline fumes to leak therefrom into the interior and the bilges of the said vessel, that the installation contained a drain cock or cocks in the gasoline lines for the drawing of gasoline in the engine room of the yacht "Seminole" and a glass gauge or gauges in the engine room connected with the gasoline tanks, that there were no shut off valves in the carburetor lines, nor drip pans or back fire arrestors on the carburetors, and in that such cock or cocks, gasoline pipes, valves and gauges were not maintained in a tight condition, and in such other respects as may appear upon the evidence developed at the trial of this action. Further than this, libelants are not able to state at this time.

2. Libelants state that it will be claimed that the gasoline valve or valves, cock or cocks, installed in the gasoline lines in the engine room and in particular such valve or valves as were utilized for the drawing of gasoline in the engine room and any others which may be developed

by the evidence at the trial were not closed. Further than this, libelants are not able to state at this time.

3. Libelants state that it will be claimed that the electrical and lighting lines, switches and devices were improper, defective and improperly installed, in that they were of such type and so installed as to permit electric sparks to be emitted therefrom in the engine room of the yacht "Seminole", and in such other respects as may be developed upon the evidence at the trial, and in particular that the knife type electric switches were improper, defective and improperly installed so as to emit electric sparks upon the operation thereof. Further than this, libelants are not able to state at this time.

4. Libelants state that it will be claimed that the respondent Phipps was negligent as alleged in the Fifth Article of the libel in that no adequate means of ventilating the engine room of the yacht "Seminole" while in storage was provided, in that there were no cowl ventilators for ventilating the engine room, in that no adequate system of inspection was established, in that access to the engine room by the respondent Pilkington for the purpose of inspection and ventilation was not arranged for or permitted, in that the engine room was locked and the respondent Pilkington was not furnished with proper keys or means of access thereto, and in such other respects as may appear upon the evidence at the trial. Further than this, libelants are not able to state at this time.

5. Libelants state that it will be claimed that improper and defective installation of the gasoline pipes and valves on the yacht "Seminole" resulted in an accumulation of gas vapor in the engine room by reason of leakage of gasoline and gasoline fumes therefrom into the engine room and the bilges of the yacht "Seminole" resulting in evaporation of the gasoline and accumulation of gas vapor

in the engine room, and in such other respects as may be developed by the evidence at the trial. Further than this, libelants are not able to state at this time.

6. Libelants state that it will be claimed that the valves, which it will be claimed were not closed as a result of which gasoline leaked into the engine room and bilges of the yacht "Seminole" and evaporated resulting in an accumulation of gasoline vapor in the engine room, were the gasoline valve or valves in the gasoline lines in the engine room which were used for the drawing of gasoline in the engine room and any other valves which it may appear upon the evidence at the trial were defective or were not tightly closed. Further than this, libelants are not able to state at this time.

7. Libelants state that the valve or valves which it will be claimed permitted gasoline to leak, as alleged in the Sixth Article of the libel, were the gasoline valve or valves installed in the gasoline lines to permit the drawing of gasoline in the engine room and any other valves which it may appear upon the evidence at the trial were not tightly closed as well as the absence of shut off valves in the carburetor lines. Further than this, libelants are not able to state at this time.

8. Libelants cannot state more fully at this time in what other respect it will be claimed that gasoline leaked into the bilge of the yacht "Seminole" other than that it is apparent from the nature of the explosion which occurred on the yacht "Seminole" that gasoline did leak into the bilge of the yacht "Seminole" and resulted in an accumulation of gasoline fumes there and that the occurrence of the explosion establishes the presence of such fumes which would not have been present if gasoline had not leaked into the bilge of the yacht "Seminole" from leaky, improper, or defective gasoline pipes or valves or

glass gauge or gauges, or by reason of absence of shut off valves on the said yacht, which conditions the respondent John S. Phipps, in the exercise of due care and caution, should not have permitted to exist. Further than this, libelants are not able to state at this time.

9. Libelants state that it will be claimed that the respondent Phipps failed to maintain the yacht "Seminole" in a proper, safe and seaworthy condition in all respects mentioned in the libel and in the answers to these interrogatories and in such other respects as may be developed upon the evidence at the trial. Further than this, libelants are not able to state at this time.

10. Libelants state that it will be claimed that over a period of eight years next preceding this disaster the yacht "Seminole" had been stored with respondent Pilkington at the Pilkington Yacht Basin at intervals by the respondent John S. Phipps and that on all occasions during such period it had been customary for the respondent Phipps, his agents and servants, to prepare the said yacht for storage and it was so prepared; that due care in the preparation of said yacht for storage under the conditions existing in the Pilkington Yacht Basin required that the tanks of said yacht be drained of all gasoline and that if any gasoline remained in the said tanks that all gasoline lines, drains, valves, outlets and gauges through which gasoline might be drawn or flow or leak should be tight and securely closed and that the said yacht should in all respects be fully, sufficiently and properly prepared for safe storage with other vessels principally of wooden construction in the wooden shed of the Pilkington Yacht Basin; that the presentation of the yacht "Seminole" at the Pilkington Yacht Basin for storage, under the conditions and circumstances described in the libel, the answers to interrogatories and the petition of the respondent Pilkington, was a representation both by the respondent

Phipps personally, and by his agents, servants, and representatives, that the said yacht had been properly prepared for safe storage in all respects, including those hereinbefore set forth. Libelants are unable to state whether express representations were also made and respectfully refer the interrogator to the respondent-petitioner Pilkington for a further answer to this interrogatory.

11. In response to Interrogatory No. 11, libelants reallege all the allegations of the libel and the answers to interrogatories 1 to 10 inclusive and further state that it will be claimed that the conditions therein set forth caused the yacht "Seminole" to be in a dangerous and unsafe condition for storage with other vessels, as alleged in the Seventh Article of the libel. Further than this, libelants are not able to state at this time.

12. Libelants state that it will be claimed that respondent Phipps' agents and servants negligently caused an explosion on the yacht "Seminole" as alleged in the Seventh Article of the libel in all the respects set forth in answers to interrogatories 1 to 11, inclusive, and further in that the respondent negligently permitted gasoline gasses to exist in the engine room of the yacht "Seminole", and in that the agents and servants of the respondent Phipps entered the engine room of the yacht "Seminole" on June 24, 1935, while the said gasses were in said engine room, and by the use of an electric knife switch caused a spark and set fire to an accumulation of gasoline fumes in the engine room of the yacht "Seminole" thereby causing an explosion which resulted in the damages sustained by the libelants, as alleged in the libel. Further than this, libelants are not able to state at this time.

13. Libelants state that it will be further claimed that the respondent Phipps was negligent in such other respects as may be developed by the evidence at this time.

BATCHELOR & DYER,

Ingraham Building,
Miami, Florida.

BIGHAM, ENGLAR, JONES &
HOUSTON,

(Proctors for Libelants.)

99 John Street,
New York, N. Y.

State of Florida,
County of Dade, ss.

William F. McCoy, being duly sworn, deposes and says:

That he is Vice-President of McCoy Brothers Indian River Navigation Company, one of the libelants named in the foregoing Answers to Interrogatories; that he has read said Answers to Interrogatories and knows the contents thereof and that it is true to the best of his knowledge, information and belief; that the reason this verification is made by deponent and not by the said libelant is that the said libelant is a corporation.

WILLIAM F. McCOY.

Sworn to before me this 30th day of April, 1938.

MILDRED M. SMITH,

(Seal)

Notary Public, State of Florida at large.

My Commission expires: 2/10/40.

On May 2nd, 1938, respondent, George J. Pilkington, filed his answer to the additional interrogatories pro-

pounded by respondent, John S. Phipps, which is in words and figures as follows:

121

ANSWER TO INTERROGATORIES.

(Title Omitted.)

Respondent George J. Pilkington, answering further interrogatories addressed to him by authority of the order of this Court dated March 18, 1938, states that the occurrence of the explosion and fire on the yacht "Seminole" on June 24, 1935, at respondent's shipyard, which resulted in the destruction of a number of vessels and respondent's shed, was such an occurrence as could not and would not have taken place except for the negligence on the part of John S. Phipps, his agents and servants, and that such occurrence created a presumption that the losses thereby resulting were due to the negligence of the respondent Phipps and were *res ipsa loquitur*. Respondent Pilkington further states that he had no opportunity to examine or inspect the engine room of the yacht "Seminole" prior to the explosion because the respondent Phipps failed to deliver to respondent Pilkington proper keys to permit an examination of the said engine room of said yacht, although respondent Pilkington had requested respondent Phipps to let him have such keys.

Answer to Interrogatory No. 1.

Respondent Pilkington states that for eight years prior to the explosion which occurred on the yacht "Seminole" on June 24, 1935, he had stored a number of boats for the respondent Phipps. The yacht "Seminole" was first received for storage pursuant to an agreement made with respondent Pilkington by respondent Phipps by and through one A. A. Simmon, an agent of said Phipps. When

said agreement was made, respondent Pilkington inquired of said Simmons the name of the owner, the master, and by whom the master was paid. The said Simmon informed said Pilkington that the yacht "Seminole" was owned by John S. Phipps, that one Nelson was her master, and that the wages of the master were paid by the said Phipps. At no time thereafter prior to the explosion aforesaid was the said Pilkington given any other information as to the ownership of the said yacht. During the year 1929, respondent Phipps introduced one J. F. Riley to respondent Pilkington and respondent Phipps informed respondent Pilkington that the said Riley was the personal secretary of the said Phipps and that whatever the said Riley said about the yachts controlled by said Phipps, including the yacht "Seminole", was with authority of the said Phipps. During the early part of January, 1932, respondent Phipps accompanied by the said Riley, called to see respondent Pilkington and requested the said Pilkington to make as low a charge as possible for the storage of the boats controlled by the said Phipps, including the yacht "Seminole", and said Pilkington thereupon wrote a letter, dated January 18, 1932, to the Palm Beach Company in response to a letter from said company, dated January 15, 1932, explaining prices charged for storage. Thereafter, on January 21, 1932, J. F. Riley wrote a letter to said Pilkington stating that the prices were not too high. Thereafter on April 26, 1933, the said Pilkington wrote a letter to the Palm Beach Company quoting a price of \$600.00 a year for storing the yacht "Seminole". On May 3, 1933, J. F. Riley wrote a letter on the stationery of the Palm Beach Company, to the said Pilkington accepting this figure. Thereafter, on March 20, 1934, Respondent Phipps wrote a letter to respondent Pilkington, requesting respondent Pilkington to deliver the yacht "Seminole" to Captain Willie Baker. When the said Baker returned the said yacht to the yard of said respondent Pilkington, on all subsequent occasions the said Baker expressly

stated that he did not desire Pilkington to turn over the engines of the "Seminole". On April 16, 1935, when the yacht "Seminole" was returned to the yard of said Pilkington, respondent Phipps did not, as was customary, deliver to said Pilkington keys to the said yacht, so that the said yacht might be aired and ventilated. Thereafter, when said Pilkington requested the said Riley to furnish him with said keys, he was supplied with two keys, neither of which fitted the lock of the hatch leading to the said engine room. Respondent Pilkington has never since April 16th, 1935 been supplied with a key to said engine room and in consequence was unable to air and ventilate said engine room.

Answer to Interrogatory No. 2.

The agreement for the storage of the yacht "Seminole" was oral. This agreement had been in existence for a period of about eight years, and was originally made by respondent Pilkington through A. A. Simmon, as agent for respondent Phipps, as owner. Respondent Pilkington was never informed of any change in the ownership. The details concerning the agreement are set forth in answer to interrogatory No. 1. In addition to what is stated in the answer to interrogatory No. 1, respondent Pilkington states that the said Phipps agreed to prepare the said yacht for storage, which involved draining her tanks and delivering the said yacht to the said Pilkington prepared for storage, and particularly in such a condition that her engine room could be aired and ventilated while stored.

Answer to Interrogatory No. 3.

This interrogatory has been answered in the answers to the two preceding interrogatories.

Answer to Interrogatory No. 4.

This interrogatory has been answered in the answers to interrogatories Nos. 1 and 2.

Answer to Interrogatory No. 5.

Throughout the eight years that the yacht "Seminole" was in storage at the yard of respondent, Pilkington, respondent, Phipps, assumed all the responsibility of fitting the said yacht for storage and when during 1935, the said yacht was left near the shed of respondent, Pilkington, by the agents and servants of respondent, Phipps, respondent, Pilkington, was informed by Captain Baker, that it was not desired that Respondent, Pilkington, should turn over the engines of the yacht "Seminole." Thereafter when respondent Pilkington asked J. F. Riley, the general agent of the said respondent, Phipps, that the keys be left with him, keys of the said boat permitting entry to the engine room were not delivered to the said Pilkington, and at no time after the said Pilkington received the said boat for storage did he have access to the engine room of the said yacht, "Seminole." Respondent asserts that the delivery of the yacht, "Seminole" at the Pilkington Yacht Basin for storage on April 16, 1935, under the circumstances and conditions hereinbefore set forth constituted a representation and a warranty by the respondent, Phipps that the said yacht "Seminole" was safe and fit and in all respects properly prepared for safe storage in close proximity with other vessels in petitioner's yacht basin, as alleged in the petition.

Answer to Interrogatory No. 6.

Respondent, Pilkington, relying upon the practice and custom of the respondent, Phipps, existing for a period of eight years, that the yacht "Seminole" would be in all re-

spects in a safe and proper condition when delivered to respondent, Pilkington, for storage, received the said yacht "Seminole" for storage in full reliance upon the said usage and custom that the said Phipps would make the said boat safe and in a proper condition for storage.

Answer to Interrogatory No. 7.

Respondent, Pilkington, was never supplied with a key to permit him to air the engine room of the yacht "Seminole" although a key was requested, and respondent does not know of the condition in said engine room, but among other things, it will be claimed that the gasoline pipes and valves on the said yacht were in such condition that gasoline leaked therefrom and permitted gas to accumulate in the engine room compartment, and oil to accumulate in the bilge, thus resulting in a condition which led to an explosion and fire.

Answer to Interrogatory No. 8.

Among other things, it will be claimed that the shut-off valve to the Number 2 tank on the fuel line to the carburetor was open and there was not shut-off valves at the carburetor. A one-half inch drain line from tanks with globe valves for drawing gasoline in the engine room was open one-quarter turn.

Answer to Interrogatory No. 9.

Respondent is not fully informed as to the electrical and lighting lines, switches and devices which were in the engine room, but so far as respondent is informed, there was an open knife switch in the said engine room which would arc when thrown in.

Answer to Interrogatory No. 10.

Respondent refers to the answers to all of the preceding interrogatories and to the general statement as an introduction to these answers to interrogatories, and states that the said yacht "Seminole" was in a dangerous and unsafe condition because she contained gasoline, and because she was in such condition that it was impossible for her to be ventilated to permit the said gasoline vapors to find their way out into the open air.

Answer to Interrogatory No. 11.

Respondent, refers to his answers to all of the preceding interrogatories, particularly to Interrogatory Number 8.

Answer to Interrogatory No. 12.

Respondent, Pilkington, gave no warning to the said Captain Abel because the said Abel presented to respondent, Pilkington, a written order from J. F. Riley, the general agent of respondent, Phipps, but respondent Pilkington is informed that the companion of the said Abel, one John Thomas, warned the said Abel that there was gasoline vapor in the said yacht "Seminole".

Answer to Interrogatory No. 13.

According to the information received by respondent Pilkington, the electric knife switch which was operated negligently by the said R. C. Abel was located in the engine room of the "Seminole" on a bulkhead at the after part of the engine room.

Answer to Interrogatory No. 14.

In answer to Interrogatory Number 14, respondent, Pilkington, repeats his answers to all of the preceding

interrogatories, and in addition, states that the valve and gasoline lines of the "Seminole" were improper and defective in that there should have been no outlet in the engine room of the "Seminole" permitting gasoline to be drawn off from her tanks, that gas should not have been permitted to accumulate or remain in said engine room, and that there was no means to ventilate same.

Answer to Interrogatory No. 15.

Respondent will claim that respondent, Phipps, failed to maintain the yacht "Seminole" in a proper, safe and seaworthy condition in that the yacht was in such condition that gasoline vapor and liquid gasoline could and did accumulate and remain in her engine room so as to constitute the danger of an explosion and fire, and in all other respects set forth in the petition and in the answers to interrogatories.

Answer to Interrogatory No. 16.

Respondent refers to his answers to all the preceding interrogatories for answer to this interrogatory.

BOTTS & FIELD,

Attorneys for Respondent,
Pilkington.

GEORGE J. PILKINGTON,

Respondent.

State of Florida,
County of Dade, ss.

On this day personally appeared before me, the undersigned authority, George J. Pilkington, to me well known who having been by me first duly sworn, deposes and says that he is one of the respondents in the above styled cause; that he has read the foregoing answers to Inter-

rogatories; knows the contents thereof and that the same are true to the best of his knowledge, information and belief.

GEORGE J. PILKINGTON.

Sworn To And Subscribed before me, this 30th day of April, A. D. 1938.

MABLE C. BARWICK,

(Seal)

Notary Public, State of Florida.

My commission expires: Mar. 4, 1942.

THE DEPOSITION OF CARL HOLM A WITNESS IN
BEHALF OF THE LIBELANTS TAKEN DE BENE
ESSE.

In the United States District Court for the Southern District of Florida. In Admiralty, Miami Division.

Charles Coryell et al., Libelants,

vs.

George J. Pilkington and John S. Phipps, Respondents.

The deposition of Carl Holm, a witness produced in behalf of Libelants, taken before Ben S. Hancock, Jr., Commissioner (also in the presence of the Hon. John W. Holland) in Chambers of the United States District Court, Miami, Florida, on the 23rd and 24th days of January, A. D. 1939, pursuant to notice.

The Commissioner:

Do you gentlemen wish me to swear the Reporter?

Mr. Matteson:

Yes, if you will.

(Thereupon the Commissioner duly sworn Henry E. Colman, a Court Reporter, to report in shorthand notes the deposition of Carl Holm and a true transcript thereof make.)

Mr. Matteson:

Will you mark the notice of the taking of this testimony? The order respecting the change of place for the taking of the testimony has already been filed

The Commissioner:

Is there any objection to this notice being marked?

Mr. Underwood:

No.

(Thereupon the notice above referred to was by the Commissioner marked Libelants' Exhibit No. 1.)

129 Thereupon: CARL HOLM was produced as a witness in behalf of the Libelants, and having been first duly sworn by the Commissioner, was examined and deposed as follows, to-wit:

Direct Examination.

By Mr. Matteson:

Q. Your name is Mr. Carl Holm?

A. Yes, sir.

Q. What is your age?

A. 36.

Q. What is your present address?

A. Marian, Kentucky.

Q. You have come here at my request to give your testimony in this case?

A. Yes, sir.

Q. You are a native of Denmark, are you not?

A. Yes.

Q. And a naturalized citizen of the United States?

A. Yes, sir.

Q. Before we go any further, Mr. Holm, will you give us an outline of your experience in the way of education and your connection with the ownership or the management of vessels of different types?

A. At the age of fourteen I enlisted in the Danish navy for a course in ship construction, boat building and naval architecture, which I finished at the age of eighteen or nineteen years; then went to the Orient where I bought two sponging vessels near Singapore and operated them in the South Seas for about a year and a half.

Q. What type of vessels were they?

A. Auxiliaries.

Q. What type of engines?

A. Gasoline-driven and sail.

Q. And how much were they, how large were they?

A. One was a 55-footer and the other one was a 60-footer.

Q. After that what did you do?

A. I went back to Denmark for commercial fishing for approximately one year, and after that I went to the United States.

Q. What type of vessels were you familiar with in connection with fishing?

A. I had two 30-foot auxiliaries.

Q. What was your connection with them?

A. Master of them.

Q. Were you Master of those vessels in the Far East?

A. Yes, sir.

Q. Continue from there.

A. I started in the Tebo Shipyards in New York; was boat-builder and ship's carpenter and gradually went to steel construction and yachts; I built two barges for

them. I came to Florida in 1926 and worked at Mathews Boatyard in Waytona Beach, and McDonald's Boatyard in Daytona Beach, until I started the United States Marine Salvage Company in Miami in 1929, and I operated it until I became Engineer for the Hickory Cane Mining Company; and now I am Engineer for the Federal Mining and Smelting Company.

Q. In connection with the United States Marine Salvage Company what type of boats did you have?

A. I was president of the corporation. I did most of the diving myself. We only had two divers employed most of the time.

Q. What type of vessels?

A. What type of vessels?

Q. Yes.

A. I had a 75-footer with two 150 H. P. Sterling engines—

Q. Gasoline?

A. Gasoline engines. A 65-footer with two 32-37 Eastern Standard gasoline engines, no sail power; and a 42-footer with a 110 H. P. Universal, no sail power.

Q. Gasoline engines also?

A. Yes, sir.

Q. When you worked in Tebo's Shipyard in Brooklyn what type of vessels did that have to do with mostly?

A. Yachts.

Q. Did you in your work there have to do with yachts, too?

A. Yes, with the exception of the barges.

Q. You constructed two steel barges there?

A. Yes.

Q. The rest of your work was on yachts?

A. Yes, sir.

Q. Did your education in the Danish Naval Academy cover gasoline installations?

A. Yes, sir. I aided in the installation of engines in the first motor-driven lifeboat in Europe and designed several similar gasoline-driven boats.

Q. Did it cover electrical installations as well?

A. No, sir. My education included electrical installations.

Q. I mean did it—

A. My education did but my work did not.

Q. How did you happen to become connected with the Mining Company?

A. Through the Salvage Company. Mr. Gibson and Mr. Parker, who owned the Hickory Cane Mining Company, asked us to pump out a 250-foot shaft for them in Marian, Kentucky, which we undertook, and after three months' operation there, the period I had undertaken to stay up there, I was asked to stay there and see the mine started in so far as machinery installation was concerned; they asked me to stay until the ore was found and the mine turned over to some other company, which was done.

Q. Did you have gasoline engines up there?

A. Yes, sir.

Q. Then from the time you were fourteen years old to date your experience, with the exception of those years in the mines, has had to do with boats and their construction and operation?

A. Yes, sir.

Q. Particularly gasoline boats?

A. Yes, sir.

Q. Now do you remember the fire that occurred at the Fort Lauderdale shipyard?

A. Do I remember the fire?

Q. Yes.

A. Yes, sir.

Q. What connection did you have with that situation up there?

A. I heard the newsboys in Miami calling the headlines of the papers, and I went to a telephone and called the yacht basin to see if we could offer any assistance as to recovery of the lost men,—as was thought at that time that two were lost.

Q. Was that an offer of assistance or soliciting of business?

A. Offering of assistance.

Q. You were not soliciting business?

A. No, sir.

Q. Just tell us who you got in touch with and what the result was.

A. I contacted Mr. Miller on the telephone who, I think, was the District Attorney of that county, and asked him if we could be of any assistance in recovering the bodies of the men, and he said, "Yes, you certainly can, but the fire is still too hot to get near the boat", and he asked us to come the next day, which we did, and I brought a diver along and diving gear and arrived there the next morning.

Q. When you arrived there what conditions did you find?

A. We found the yacht basin in a deplorable condition; the boats that had caught fire sunk of course; not all of them, because some were afloat, and Mr. Pilkington advised us that a man—

Mr. Underwood:

I object to what Mr. Pilkington advised this witness.

The Commissioner:

Note the objection.

Q. Continue.

A. That a man was lost in the Seminole, and we were asked to bring the diving gear over near the Seminole

and go into her, which I did. The poles on the dock-shore construction were burning and--

Q. Wooden poles?

A. Yes. And Bill and Ben McCoy, who owned the Blue Lagoon, arrived on the scene, and Bill thought I was crazy for wanting to go into that gasoline water, and he grabbed me by the neck and dragged me off the pier, but I convinced him I wasn't crazy and that there wasn't as much danger as he thought there was, and I went in the water and looked for the man and gave it up during the day as a bad job due to the wreckage and debris falling in the engine-room which was liable to cause an explosion.

Q. It was in the engineroom that you searched?

A. Yes, sir.

Mr. Underwood:

I move to strike out what the McCoy's thought.

The Commissioner:

Note the motion on the record.

Q. Now how did you go about diving in the engine-room of the Seminole?

A. We removed two davits, as I recall, so as to open the passageway in the hatch, the engineroom hatch, and went through there with my diving helmet.

Q. You went down the hatch?

A. Yes.

Q. Where was your diving equipment located, the air pump?

A. The pump was on the dock.

Q. Did you personally do all of the diving there?

A. Yes, sir.

Q. How long did you continue searching that afternoon, do you recall?

A. Spasmodically for the rest of the day; I dare say that that under-water work consisted of approximately two to three hours' searching.

Q. When you were not able to find the man in that fashion, what did you do next?

A. I suggested to Mr. Miller that we raise the Seminole in order to move enough of the debris so that we could get to the floor, which he granted.

Q. What did you do?

A. And contacted Mr. West, a contractor at Fort Lauderdale, for a pump.

Q. You spoke of raising and pumping; what was the condition of the Seminole at that time?

A. The Seminole was sunk at the time I suggested to Mr. Miller to raise the boat.

Q. All right.

A. And there was an awful lot of gasoline on the water.

Q. And she was sunk also when you were searching for the man, I assume?

A. Yes, sir.

Q. Now how did you go about raising that boat?

A. Mr. West I think had a contract on the pumping. Hose suction were inserted in the hull where we could get nearest to the bilges and the water was discharged in that way. We had to go all around the vessel with rags and seaweed and other things or whatever we might have picked up in order to tighten the seams and seat connections.

Q. Were there any openings which had to be stopped?

A. All the lead pipes, toilets and bathtubs and so on were burned, and we had to open a way to the sea and the seams in the vent were strained to such an extent that we had to fit seaweed and sawdust in them so as to—

Q. When you say that you did that with seaweed and sawdust, what do you mean?

A. The suction of the pump created lower pressure in the hull of the whole vessel, and when we held our hands

in the seams we observed the gradual suction into the seams where the leaks might be.

Q. And would that stop the leaks?

A. Yes, to some extent.

Q. If the leaks were not stopped or diminished would the boat float?

A. The boat floated, and when the boat came up to where we could insert more permanent plugs in the seat-connections we did.

Q. What seat-connections did you find that you had to stop?

A. The toilet connections and the bathtub connections, and I think two seacocks in the engine-room, one in the port and one in the starboard side.

Q. Where were these toilet connections you speak of?

A. One forward in the starboard side I know and as far as I remember there was one in the port side abaft the engineroom bulkhead.

Q. About what time of the day did you begin pumping?

A. If I remember it was dark and the boat floated about two or three o'clock in the morning.

Q. Will you describe just what conditions you noted during the course of the pumping?

A. When I noticed a sort of spring out of the water—above the surface of the water—Jack Lowney called my attention to it—I stuck my fingers into it and smelled it and tasted it, and there was no question but—

Q. You smelled it and tasted it?

A. Yes, and there was no question about it being gasoline coming out of some source, which I later found was the pipe.

Q. What did you do about that?

A. We made plugs and plugged that one and two others.

Q. What openings did you plug?

A. Pipes leading to the gas tanks.

Q. Did you continue pumping?

A. Continued pumping, and some gas naturally escaped out of those openings. We were very careful with our flashlight. A man in the yard wanted to rig up an electric cord as a means whereby we could see, but I suggested not to fool around with anything but a flashlight, and we were very careful with the switches and those things, because gasoline was all over the surface of the water, in the boat and the poles were burning nearby—the poles around the shed had been wrecked.

Q. You say the boat floated about two-thirty?

A. Between two and two-thirty, something like that.

Q. What did you do then?

A. We took up the search for the body again. We had to move some debris and finally found—

Q. Did you do that that night or did you wait for daylight?

A. That night. We kept on the job continuously.

Q. Did you pump the vessel until the engineroom was dry?

A. As dry as we could get it with the suction we had.

Q. Was the water then below the level of the floor of the engineroom?

A. Yes, sir.

Q. Describe for us your search for this man that you found.

A. Jack Lowney noticed the flesh spattered over the forward engineroom bulkhead and he called my attention to it; we found the body lying just ahead of the port engine, if I remember right; his arms were blown off at the elbows and his legs blown off at the knees. We notified the Coroner that Mr. Miller instructed us to notify and if I remember right the hearse or ambulance arrived at daybreak. We brought the body ashore in a canvas.

Mr. Underwood:

I move to strike the witness' testimony in so far as he purports to give the cause of the dismemberment of the body, on the ground that he is not qualified and no foundation has been laid.

The Commissioner:

Note the motion on the record.

Q. How was the body located with respect to debris in the engineroom?

A. The body was lying under a slab that had fallen from the upper deck which practically covered the body.

Q. Now after the body was removed what did you do? Did you continue your investigation of the engineroom or not?

A. Mr. Miller asked us what might be the cause of the fire—

Mr. Underwood:

I object to any conversation between this witness and Mr. Miller on the ground that it is incompetent, irrelevant and immaterial and not binding on the respondent I represent.

The Commissioner:

Note the motion on the record.

Q. Well, did you do something at the request of Mr. Miller?

A. We removed the valves.

Q. Do I understand Mr. Miller requested you to do something?

A. Yes, Mr. Miller requested us to look into the position of the valves.

Mr. Underwood:

I move to strike that out on the ground that it is a conclusion; on the ground that it is hearsay, incompetent, irrelevant and immaterial and not binding on the respondent Phipps.

Q. As the result of what Mr. Miller said to you tell us what you did?

A. I removed a valve laying below the opening of Tank number 2, counting from the port side of the vessel looking forward, a valve that had been located there for the purpose of discharging gas from the tank.

Mr. Underwood:

I move to strike the conclusion of the witness as to the purpose of the location of the valve before he saw it.

The Commissioner:

Note the motion on the record.

Q. Continue.

A. I removed two valves lying between the two engines near the position of the body.

Q. Did you make any examination of the piping, any general examination of the piping and valves in the engineroom?

A. Yes, sir.

Q. Now among the things which we have here on this table, which have been impounded under an order of Court on February 17, 1937, will you see if you can pick out and identify any of the things you have told us about?

A. This is the valve that was removed from below the opening leading into the number 2 tank.

Q. How many tanks did the Seminole have?

A. There were four gas tanks.

Q. Where were they located?

A. They were located between two steel bulkheads ahead of the forward engineroom bulkhead.

Q. Separated from the engineroom by what?

A. By a steel bulkhead.

Q. And what provision was there for drawing gasoline into the engineroom from these tanks?

Mr. Underwood:

Can we, before we go any further, identify this piece in some way so it won't get mixed up with the other stuff?

Mr. Matteson:

In just a minute.

A. What provision was there for drawing gas from—

Q. —the four tanks in the engineroom?

A. Four openings in the tanks approximately five inches above the edge of the bottom of the tanks resulting in a manifold connecting the four, of which that valve is a part and this pipeline also.

Q. Were the valves on any of the tanks in place?

A. Yes, sir; three of the valves were in place.

Q. How did they compare with this valve?

A. Exactly the same.

Q. And the valve from tank number 2 was displaced?

A. Displaced. The tank was distorted from its original position upward; distorted upward from its original position, I guess.

Q. Where did you find this valve and its attached pipe with respect to the opening from the number 2 tank?

A. Below the opening on the engineroom floor.

Q. From its position and its similarity to the other valves what did you deduce?

Mr. Underwood:

I object to what he deduced.

The Commissioner:
Note the objection.

A. I decided—

Mr. Underwood:
Same objection.

Q. Go ahead.

A. I decided that it was a valve designed for the same purpose as the other three, for draining gas from the tanks.

Mr. Matteson:

Will you mark this as Exhibit 2. I offer it in evidence.

The Commissioner:

Is there any objection you wish to put in the record?

Mr. Underwood:

Let me look at it. I object to it on the ground that it has not been properly identified.

Mr. Matteson:

Mark it for identification.

(Thereupon the valve above referred to was marked for identification as Libelants' Exhibit number 2.)

Q. I show you this picture which was taken very recently and ask if you can identify it and tell us what it shows?

Mr. Underwood:

I object to the witness telling what the photograph shows.

The Commissioner:
Note the objection.

A. Shall I answer the question?

Q. Yes.

A. This picture shows—

Mr. Underwood:

I object on the further ground that the picture has not been identified nor the time or place of taking the picture shown.

A. Shall I answer the question now?

Q. Yes.

A. This picture shows the drain valve on tank number 1 and the silencer and the auxiliary light plant as far as I can determine.

Q. Will you indicate where the valve on tank number 1 appears in this picture?

A. Here (indicating).

Q. I will draw an arrow pointing to that spot and I will write "valve number 1" opposite the end.

A. They are numbered from port to starboard, looking forward.

Q. So the three other tanks and valves would be to the right-end of this picture as you look at it?

A. Yes.

Q. The other tank that you spoke of was where?

A. This side of here (indicating).

Q. Now I will draw another arrow at the end of which I will write the word "silencer". Can you tell us what that silencer is, what its function is?

A. Its object is to muffle the sound of the exhaust of the engine.

Q. What engine is that attached to?

A. The auxiliary light plant as far as I could determine at the time.

Mr. Matteson:

I offer this picture in evidence.

A. Pardon me. There is something else shown in this photograph.

Q. Please point it out.

A. A sea-connection. As far as I remember we plugged it; water came in through this.

Q. At which end was it plugged, inside or out?

A. We had the plug on the inside; we couldn't reach it from the outside.

Q. I will draw an arrow pointing to this object and will mark it "sea-connection." Is there anything else in this picture that—

A. Nothing of importance.

Q. What is this object which is at the left of the hole? There seems to be something standing out there.

A. A shelf bracket; for what purpose I don't know.

Q. Shelf bracket?

A. Yes.

Q. I will draw an arrow there and mark it "Bracket."

A. The surfact there is of the steel bulkhead.

Q. Does the bottom of the tank appear in that picture?

A. Yes, sir.

Q. Where is that?

A. The bottom of the tank is here (indicating) and its construction is shown in this same picture.

Q. What part of its construction is shown?

A. The bottom part of the tank construction is shown in the picture, the riveted convex bottom and the sides of the tank.

Q. I will draw an arrow pointing to that and mark it "tank bottom." Now this valve number 1 as it is attached to tank number 1 in this picture appears to be partially inside and partially outside of the bulkhead, is that correct?

A. Yes, sir.

Q. So that if the tank were displaced what would the effect on that valve be?

Mr. Underwood:

I object to that question because he could not possibly know that, and no proper foundation has been laid

The Commissioner:

Not the objection.

A. It would be torn off.

Q. I show you another picture here. Can you identify that?

A. Yes, sir.

Q. What is that a picture of?

A. It is a close-up of the same valve as shown in picture number 1.

Mr. Underwood:

May I suggest that before we go any further, Mr. Matteson, you offer that or have it identified in some manner?

Mr. Matteson:

I will offer the first picture in evidence.

Mr. Underwood:

Will Mr. Matteson concede that that is one of the pictures taken in December of this year pursuant to leave granted by this Court in another action?

Mr. Matteson:

That is correct; I will concede that.

Mr. Underwood:

I object to the picture on the ground that it was taken in another cause, and on the further ground that it has not been properly identified, and the circumstances of the place and the taking of the picture have not been shown.

Mr. Matteson:

That will all be shown in due course.

Mr. Underwood:

You have a copy of that picture, I believe.

Mr. Matteson:

Yes. Mark it for identification.

(Thereupon the photograph above offered in evidence was marked Libelants' Exhibit No. 3.)

Q. This second picture I believe you said, Mr. Holm, was a close-up of the same valve?

A. Of the same valve.

Mr. Matteson:

I offer that in evidence.

Mr. Underwood:

Same objection.

The Commissioner:

I will mark it for identification as Libelants' Exhibit No. 4.

Q. And this other picture I now show you is what?

A. It is a "closer-up" of the same valve.

Mr. Matteson:

I offer it in evidence.

The Commissioner:

I will mark it for identification as Libelants' Exhibit No. 5.

Q. There is one other feature that appears in this picture I would like to ask you about. What is this that seems to project from the bulkhead just to the left of the opening for the valve in this Exhibit number 4?

A. It is a web, an angle iron riveted to the bulkhead for the strengthening of the same.

Q. You call it a web?

A. Hangline web.

Q. Web?

A. Yes, sir.

Q. Can you tell us about how far from the bulkhead that projects?

A. Approximately two inches.

Q. I show you this picture and ask you what this is?

A. It is a view of the top of the four gasoline tanks in the Seminole, with number 2 tank in its distorted position.

Q. Is that the way it was at the time you first saw it?

A. Exactly.

Q. I will draw an arrow on that which you call number 2 tank.

A. Number 2 tank, yes.

Q. And this picture to the right is toward the bow of the ship, is it?

A. Yes, sir.

Q. How did those four tanks fit into the compartment in which they were placed?

A. Very snugly, with wooden padding between, of which some parts remained.

Q. When you say "snugly", how much space would there be between the tanks in their normal upright position?

A. As far as I remember two inches.

Q. How close would the tanks be to the bulkhead on the engineroom side if the bulkhead were undistorted?

A. Approximately the same distance.

Q. Approximately how close would they be to the bulkhead separating the tank compartment from the forward end of the ship?

A. Very close but I don't remember the exact distance.

Q. About the same?

A. I should say.

Q. Could you draw us a little picture showing an outline of the Sentinole and the location of the engineroom and these tanks, so we would get a general visualization of it?

A. Yes (witness makes diagram).

Mr. Matteson:

I want to offer this additional picture in evidence, showing the tanks.

Mr. Underwood:

The same objection.

The Commissioner:

Note the objection on the record. You make the same objection as to all pictures, I presume?

Mr. Underwood:

Yes.

(Thereupon the photograph last offered in evidence was marked Libelants' Exhibit No. 6.)

Q. Did the tank compartment extend all the way across the ship?

A. Yes, sir.

Q. Are you about through with that diagram?

A. Yes, with the exception of what space is necessary of course due to the shape of the vessel.

Q. I show you what purports to be a plan of the Seminole and ask if that refreshes your recollection to any extent?

A. I don't remember the passageway; my recollection was that the tanks extended all the way across the vessel.

Mr. Underwood:

Let us have that marked for identification, please.

Mr. Matteson:

I have no objection. You can mark it my next exhibit for identification.

(Thereupon the plan above referred to was marked for identification as Libelants' Exhibit No. 7.)

Q. That plan—

A. That is my recollection of it; I may be wrong, however.

Q. Now the engineroom, I take it from this diagram, was approximately amidships?

A. Approximately.

Q. There were two engines, the port and starboard engines?

A. Yes, sir.

Q. Which you have marked here with two arrows and indicated the main engineroom?

A. Yes.

Q. And then on the other side of the port engine there is an auxiliary?

A. Yes, forward of the port engine.

Mr. Underwood:

May I suggest that you let the witness testify.

Mr. Matteson:

I am just referring to the marks that he indicated here. I will get at it in another way.

Q. What is this object here that I am pointing to now?

A. Auxiliary light plant, or light plant rather.

Q. Where is that located?

A. On the port side of the vessel.

Q. Was it nearer to the side of the vessel than the port engine?

A. Yes, sir.

Q. You call that the light plant?

A. Yes, sir.

Q. I will mark that "light plant". What is this other object that you have marked here?

A. Auxiliary light plant. They both could be termed auxiliaries.

Q. I will mark here "auxiliary light plant" and an arrow leading to that object. You mark it.

A. All right. Shall I mark "steel bulkheads" also?

Q. Yes, please.

A. (Witness so marks.) And the tanks?

Q. You have already marked the tanks.

A. I mean shall I number them?

Q. Yes, please.

A. (Witness complies).

Q. Now if it should turn out that you were in error about the tanks extending all the way across the ship and it should be a fact that there was a passageway on the starboard side of the ship passing the tanks, would there be any other effect than simply to push this tank compartment toward the port side?

A. No, sir.

Q. That would be the only difference in your diagram?

A. Yes, sir.

Q. They would still fill the compartment?

A. Fill the compartment that they were installed in.

Mr. Matteson:

I will offer this diagram in evidence.

(Thereupon the diagram above referred to was marked in evidence as Libelants' Exhibit No. 8.)

Q. I show you one more photograph and ask if you can identify that?

A. It is a view of the forward engineroom bulkhead and the aft tank compartment bulkhead, which would be about the same, showing the openings for the gas drain valves.

Q. Which openings can you see there?

A. Nos. 1, 2 and 3.

Q. I will draw an arrow referring to number 1. Where is number 2?

A. Number 2 must be behind that bracket; I think the halfmoon or half-circle is shown behind the bracket there.

Q. I will mark that number 2. Where do you see number 3?

A. Number 3 is shown there (pointing) very plainly.

Q. I will mark that number 3.

Mr. Matteson:

I offer this picture in evidence.

Mr. Underwood:

The same objection as to the other photographs.

(Thereupon the photograph above offered in evidence was marked Libelants' Exhibit No. 9.)

Q. I have one more picture here. Can you tell me if you can identify that?

A. It is a view of the auxiliary light plant stationed ahead of the port engine, port main engine, and against the forward engineroom bulkhead.

Q. Do any of these tank valve openings you have been speaking of appear in that picture?

A. Yes number 1; the others apparently are hidden.

Q. Will you point out number 1 to me?

A. Here (indicating) is number 1.

Q. I will mark that number 1. Is the valve shown in place on that picture or not?

A. The handle of the valve.

Q. Appears just above the bracket?

A. Yes, sir.

Q. Did you see that valve in place at the time you were examining the wreck of the Seminole?

A. Yes, sir.

Q. How did it compare with this valve which we have marked as Exhibit number 2?

A. The make and the size of the valve appeared exactly the same as that Exhibit.

Q. Can you identify any of these other parts here on the table which are deposited in Court under the order of Court referred to?

A. This exhibit I recognize as the valves we decided were the drain valves attached to the pipe leading to the gas line manifold in the starboard side of the tank compartment.

Mr. Matteson:

I offer in evidence the photograph last referred to.

Mr. Underwood:

The same objection.

(Thereupon the photograph above referred to was marked Libelants' Exhibit No. 10.)

Q. I show you this little photograph and ask if you can identify that?

Mr. Matteson:

Before we go any further I will ask that this pair of valves which has just been identified be marked in evidence as Exhibit 11.

The Commissioner:

Do you wish to make an objection on the record?

Mr. Underwood:

I would like to cross examine the witness on that first, reserving my objection until I have had an opportunity to do so.

Mr. Matterson:

I will examine him quite a bit about it first.

(Thereupon the two valves above referred to were marked as Libelants' Exhibit No. 11.)

Mr. Matteson:

Now read the last question.

(Preceding question repeated by the Reporter as follows: "Q. I show you this little photograph and ask if you can identify that?")

A. I identify this photograph as a view or picture of the engineroom taken from the port side with the position of the body marked, and the position of the auxiliary light plant on the port side of the vessel shown to the left, and the starboard engine in the right side of the picture—

it would be the port engine, pardon me. The pipe indicated with the arrow is the pipeline that fits the exhibit of the two valves and leading to the gas line manifold on the starboard side of the tank compartment.

Q. Were these valves that were marked Exhibit 11 attached to this line that you have spoken of as a gas line at the time you found it?

A. No, sir:

Q. Where were they?

A. They were lying immediately below the openings shown and indicated with the arrows in the picture.

Q. Is there anything about the valves themselves to indicate whether or not they were attached to that line?

A. The pipe broken off at the end of the drain valve marked "150" fitted the broken pipe indicated by the arrow.

Q. If these valves were connected to that line in that manner for what purpose could they be used?

A. They could be used as drain valves for the purpose of discharging gasoline from the four tanks.

Q. Into what?

A. Into containers and other things that might be—

Q. —used for that purpose?

A. That might be used for that purpose.

Mr. Matterson:

Mark this little photograph as Exhibit 12.

Mr. Underwood:

The same objection.

(Thereupon the photograph above referred to was marked Libelants' Exhibit No. 12.)

Q. I show you this object here, which is also one of those items deposited under the order of the Court referred to. Can you tell us what that is?

A. It is a gasoline—it is a can found at the forward end of the engineroom beside the body.

Q. And where with respect to these valves that you have been referring to?

A. Beside them.

Q. In what position was the can when you found it?

A. Tilted over in the debris or wreckage, with the funnel hanging on one side; gasoline funnel I should say.

Mr. Matteson:

I will fasten this tag right on to the can and offer this can in evidence.

(Thereupon the gasoline can above referred to was marked Libelants' Exhibit No. 13.)

Q. Now can you tell us what this object is that I hold in my hand?

A. That is the gasoline funnel.

Q. And where did you find that?

A. Hanging about like that (indicating), with the can tilted over and dripping—

Mr. Matteson:

I will offer this tag in evidence, together with the funnel.

(Thereupon the tag and funnel above referred to were marked Libelants' Exhibit No. 14.)

Q. I show you another picture and ask you if you can identify that?

A. It is a photograph taken between the two main engines of the forward engineroom bulkhead and the small auxiliary plant in the right side of the picture, apparently a water-pressure system.

Q. Is that a gasoline engine or electric-driven?

A. Electric-driven. And the pipe where the drain valves fit is shown through the center of the picture.

Q. Is this the line right here (pointing)?

A. Yes, sir.

Q. I will write "drain line" here. I offer this picture in evidence.

Mr. Underwood:

The same objection.

(Thereupon the photograph above referred to was marked as Libelants' Exhibit No. 15.)

Q. I show you another photograph and ask you to tell me about that?

A. This photograph was taken toward the forward portside corner of the engineroom, showing the auxiliary light plant and the end of the gasoline drain pipe in the righthand side of the picture; also showing number 1 gasoline drain valve in the left upper corner of the picture; that is the end of the gasoline drain pipe.

Q. I will mark it "end of drain pipe". And what else do you see?

A. This is the gas line valve to number 1 tank.

Q. Gas line valve to number 1 tank?

A. Yes, number 1.

Q. In the vicinity of valve number 1 there is some sort of a line there. Do you know what that is?

A. I don't know what it is unless it would be a part of the gas line manifold broken off from valve number 1 and turned a quarter of a turn to the right showing the elbow.

Q. Is it connected to the valve on that picture?

A. I don't think so.

Q. Did you say what this white object in the picture is supposed to represent, or do you know?

A. I don't know.

Mr. Matteson:

I offer this in evidence as Exhibit 16.

Mr. Underwood:

Same objection.

(Thereupon the photograph above offered in evidence was marked Libelants' Exhibit No. 16.)

Q. When you speak of a gasoline manifold line just what do you mean?

A. A gasoline line branched out with connections to the four tanks.

Q. And a common line running to all four tanks?

A. Yes, sir.

Q. Can you tell us what these sections of pipe connected with this valve that you have identified as number 2 valve, Exhibit 3, are?

A. That is a part of the gas manifold line.

Q. Is there anything about these tanks to show how they were filled?

A. This picture shows part of the filling-line fittings there (indicating); one of the filling line holes is shown on tank number 3.

Q. Is this the filling line hole that is shown on the side of tank number 3 (Exhibit 6)?

A. Yes, sir.

Q. I will mark that "filling hole". And the piece that you spoke of as being a piece of the filling line,—what is that?

A. That is the fitting.

Q. That is just a plain, ordinary connection piece?

A. "Cross" it is called.

Q. It is lying free on top of number 3 tank?

A. Yes, sir.

Q. I will mark that "filling line fixture".

A. That picture also shows a part of the gasoline tank vents.

Q. How were they connected?

A. They were connected from each tank to a common manifold leading to the side of the vessel in the center of the top of each tank.

Q. I will mark one part of this "vent line".

A. That's right.

Q. Do you recall the size of the filler hole in the tanks?

A. As far as I remember "two inch".

Q. Were there openings in the bulkhead of the tank compartment for carrying the fuel line through the engine-room?

A. Yes, sir.

Q. Corresponding to the—

A. Corresponding to the openings in the tanks.

Q. In the bottom?

A. Yes.

Q. Now there is another object here. Can you identify this?

A. That is a part of the gasoline manifold line, what is known as a trap.

Q. And where did you find this in the engine room?

A. Between the auxiliary light plant and the engine-room bulkhead.

Q. This piece that you referred to as a trap, is that a well known device used in gasoline lines?

A. Yes, sir.

Mr. Matteson:

I will ask to have this marked as an exhibit.

(Thereupon the trap above referred to was marked as Libelants' Exhibit No. 17.)

Mr. Underwood:

I make the same objection.

Q. Now there is one more object that you have not identified. Can you tell me what that is?

A. I recognize this as a part of the knife switch found in the aft end of the engineroom near the aft engineroom bulkhead.

Q. What do you mean by knife-switch?

A. A knife-switch is a double throw copper device used for connecting two poles of an electric system.

Q. Did you find the switch in the engineroom, the electrical switch?

A. Yes, sir.

Q. Where was that located?

A. A few feet ahead of the aft engineroom bulkhead below the position of the switchboard, of the remaining part of the switchboard.

Q. A part of the switchboard was in place?

A. Yes, the brackets.

Q. And the switchboard itself was in that vicinity?

A. Yes, sir.

Q. Where did you find this, referring to the object discussed?

A. A few feet ahead of the switchboard on the engineroom floor.

Q. Can you identify this as having been a part of the switchboard?

A. Yes, sir. This is fastened to the switchboard with a hole in one end of this knife.

Q. Would this be the main switch?

Mr. Underwood:

I object to that. No proper foundation has been laid.

The Commissioner:

Note the objection.

A. That—

Q. Or would it be the largest switch on the switchboard?

A. As I remember it was the largest switch, the largest switch on the switchboard.

Mr. Matteson:

I will offer this in evidence.

(Thereupon the knife-switch above offered in evidence was marked Libelants' Exhibit No. 18.)

Q. From what you could see of the remains of the switchboard and the switches, can you tell us what type of switchboard it was?

A. What type?

Q. Yes; just its general characteristics and so on?

A. I determined that it was a typical slide switchboard.

Q. Open or enclosed?

A. With open switches.

Q. In what condition did you find the knives of the switch on the switchboard?

Mr. Underwood:

Did we have the switch identified?

Mr. Matteson:

I will reframe my question.

Q. Did you make an examination of the switchboard for the purpose of noting the position of the switch when you found it?

A. This particular switch wasn't on the switchboard at the time it was found.

Mr. Underwood:

Indicating Exhibit 18.

Q. What did you find on the switchboard?

A. The knives were not contacting; there was a space of approximately a quarter of an inch in between.

Q. Then the knives were within a quarter of an inch of contact, is that right?

A. Yes, that is right.

Q. If the switch were left in an open position, the normal ordinary way, how far apart would the knives be separated?

A. I would say approximately six to eight inches.

Q. In other words, the switch throws back some distance?

A. In this particular case it comes down; in opening the circuit you throw the switch down and in closing the switch you throw it up.

Q. And you found the knives on the switchboard within a quarter of an inch of being in contact?

A. Yes, sir.

Q. Now, Mr. Holm, how many years does your experience in gasoline boats cover altogether?

A. Approximately twenty.

Q. How many have you owned and operated altogether?

A. I have owned three and operated those, and several other boats or vessels.

Q. What can you tell us as to the safety factor involved in having a draw-off line for gasoline in the engineroom of a gasoline vessel?

Mr. Underwood:

I object to that on the ground that the witness has not been qualified to express an opinion.

A. I will answer that by saying that it is extremely dangerous.

Q. Do you know of any general rules dealing with that subject?

A. Yes, the laws concerning the—

Mr. Underwood:

I object to the proof of any law or rules by this witness in this way.

Q. Just tell us what you know about it.

A. The laws concerning rules and regulations of installation of gasoline engines and auxiliaries prohibit any drains in the engineroom.

Q. Have you ever had any such contrivance in any boat that you have been connected with?

A. No, sir.

Q. Can you tell us what the standard shipyard practice is with reference to such installation?

Mr. Underwood:

Objected to, not qualified.

A. The standard shipyard practice in this country is to have the gasoline tank on the open deck for the purpose of drawing off gasoline for auxiliary tenders and other uses.

Q. Well, is it permitted to have draw-off devices for gasoline in the engineroom?

A. It is permitted?

Q. I mean is that standard shipyard practice?

A. No, sir.

Q. Why do you say that it is not a safe thing to have them in the engineroom?

A. Because gas fumes originating from spilled gas due to drainage of gasoline from the spigots can create a very dangerous situation.

Q. Well, will you explain to us what the dangers of spillage of gas in the engineroom of a gasoline vessel may be?

A. Spilled gasoline in the engineroom will naturally accumulate in the bilges and throw off fumes to the extent

that if any spark or any fire is ever introduced in the engineroom an explosion will happen.

Q. Is that a hazard which is known generally and understood?

A. An explosion hazard.

Q. I say is that a hazard that is generally known and understood?

A. Yes, it is generally known as a hazard.

Q. Does it take very much in the way of gasoline fumes in the interior of the vessel to create such a hazard?

Mr. Underwood:

I object to that; the witness is not qualified.

The Commissioner:

Note the objection.

A. No, it doesn't take very much.

Q. Now the observations that you have just given us are based on what; the opinions that you have just given us are based on what?

A. General engineering, and experience of other yachts and boats and common information.

Q. Were you taught anything in respect to hazards in the handling of gasoline in connection with your schooling at the Danish Naval Academy?

A. Yes, sir.

Mr. Underwood:

I object to that on the ground that the practice in Denmark is not applicable here.

A. It is general international information that gas will explode and that explosions cause gas fumes.

Q. Is it or not a well known fact that the possible accumulation of gasoline vapors in the interior of a gaso-

line boat is a well known and understood hazard which requires great precaution?

A. Very much.

Q. Now you spoke of finding three of the valves attached to the gasoline tanks—

A. Yes, sir.

Q. In place?

A. Yes.

Q. Did you try those valves to determine their position?

A. At Mr. Miller's request, yes.

Q. What did you find with respect thereto?

A. They were open.

Q. All three were open?

A. Yes, sir.

Q. What do you mean by "open"?

A. They were open to the extent that one would have to use force in order to change the valve stem to a more closed position.

Q. Now did you note the condition of the gasoline connections to the main engines of the Seminole?

A. In particular, yes.

Q. What did you find with reference to those connections?

A. There were no shut-off valves near the carburetors on the two main engines nor on the larger light plant.

Q. Then if the valves of the tanks were open what would be the condition with respect to a supply of gasoline at the carburetors of those engines?

A. The entire head of the gas in the tanks would be on the carburetors.

Q. What sort of a condition would that create?

A. It would create a drip or a leak in the case of faulty fittings or faulty carburetor connections, which could not be stopped or checked without closing the main gasoline valves.

Q. And if a vessel were laid up with the main gasoline valves open, would that or would that not create a hazard of gasoline leaking in the engineroom?

A. Very much so.

Q. What is the effect of gasoline in a line that has numerous connections, elbow connections?

Mr. Underwood:

I object to that on the ground that the witness is not qualified.

A. The more connections in the gas line the greater the tendency for leaks.

Q. What is that?

A. Particularly where improper fittings are in question.

Q. Why is it that there is danger of leakage around elbow connections?

A. Because it is a joint and any joint is a weaker link than the pipeline itself.

Q. Is there any difference between the danger of leakage of water in such a line and leakage of gas?

A. There is a greater danger in the leakage of gas in the case of gasoline line due to the fact that gasoline is a penetrating fluid and water is not.

Q. I show you again this line connected to the valve which you have identified as number 2 valve and which you say was a part of the manifold line, and call your attention to the connections in that line. Would you or would you not say that that was a proper condition for the manifold gasoline line?

Mr. Underwood:

I object to that on the ground that the witness is not qualified.

A. I would say it is improper for a gasoline line.

Q. Why?

A. Due to too many elbows for one thing; too many elbows.

Mr. Underwood:

What exhibit is that?

Mr. Matteson:

Exhibit No. 2.

Q. How could the use of elbows be avoided?

A. By the bending of the brass tubing.

Q. Is that brass tubing easily bent?

A. Yes, sir.

Q. Now did you notice whether or not the carburetors of the main engines were equipped with drip pans or any contrivance for controlling leakage from the carburetors?

A. I didn't see any drip pans.

Q. Do you look for them? I mean did you examine the device closely?

A. Yes, as much as I could look at them at the time due to the debris and wreckage.

Q. I show you this picture and ask you if you can identify it?

A. It is a picture of the carburetor, as far as I could say, of the port engine with the detached gas supply line in the lower part of the picture.

Q. This shows a part of the gasoline feed line coming up from beneath the floor of the engineroom to the point where it connected with the carburetor, is that right?

A. That is right.

Q. And it become detached from the carburetor?

A. Yes.

Q. And this is the line in which you said there was no shut-off valve?

A. No shut-off valve.

Q. I will draw a line there and mark it "carburetor line". Now will you point out the carburetor for me there?

A. Here (points).

Q. All of this part here (pointing) is the carburetor, is it?

A. Yes.

Q. Draw a circle around it.

A. (Witness complies).

Q. I will mark it "carburetor".

A. That's right.

Q. You say there was no evidence of any drip pan having been under the carburetor?

A. No, there was no evidence of it.

Q. Then if there was a leakage through the carburetor where would that gasoline go?

A. In the bilges of the vessel.

Mr. Matteson:

I offer this photograph in evidence.

Mr. Underwood:

The same objection.

The Commissioner:

Let me mark it.

(Thereupon the photograph above referred to and offered in evidence was marked Libelants' Exhibit No. 19.)

Q. I show you this second photograph and ask if you can identify that?

A. This is a picture of the light plant installed in the portside of the vessel, showing the gasoline feed line in the center of the picture, and the port engine in the left-hand side of the picture.

Q. And where is the feed line for the generator?

A. Here (pointing).

Q. Is that it?

A. Yes, sir.

Q. I will mark that "feed line for generator."

A. That's it.

Q. And where is the feed line on the port engine?

A. Here (indicating) is the feed line on the port engine.

Q. And that is the other line in which you say there was no shut-off?

A. Yes; in neither one of the two lines.

Mr. Matteson:

I offer this in evidence.

Mr. Underwood:

The same objection.

(Thereupon the photograph above referred to and offered in evidence was marked Libelants' Exhibit No. 20.)

Q. Now I want to go back again to this pair of valves, Exhibit 11, and ask you about these valves, as to their suitability for use as valves in a gasoline line. What type of valves are they, to begin with?

A. Typical steam-water valves; one, without removing the bonnet, I would say was a piston seat valve, the one marked Crane 150; the other one, without removing the bonnet, I would say is a drainage seat valve, marked Crane 125.

Q. What would be the object in putting two valves like that in a drain line?

Mr. Underwood:

I object to that because it calls for the operation of somebody else's mind.

Q. What could the object be?

A. The object could be getting rid of a valve you would have nowhere else to place and the object could be in preventing a leak created in one valve by the placing of the other valve outside of it.

Q. Are these two valves the same size, by the way?

A. The Crane valve marked 150 is a half-inch bronze valve, and the Crane valve marked 125 is a three-quarter inch bronze valve, and a reducer is placed between the valve from three-quarters to half an inch, and a bronze union beyond that. I should say that the make-up between the valves is improper for one thing, due to the fact that the collar of the union is screwed up with its face close to the Crane valve marked 150, which could "impossibly" make a tight connection.

Q. You mean that it would be impossible for it to be tight in that way?

A. The object in plumbing is to make tight connections, which can only be done by having the threads of the female connection jammed tight in the threads of the male connection.

Q. And the fact that there is no thread showing outside of the connection—

A. I should say that it is an improper connection.

Q. And in your judgment would that or would that not leak if used as a gasoline connection?

A. It might and it might not leak, but it would not be accepted as a proper connection.

Q. From your years of experience as a boat owner and operator and your technical training and your work in shipyards and your knowledge of shipyard practice, would you say that that was a workman-like connection to use on a gasoline line?

Mr. Underwood:

I object to the question on the ground that the witness has not been qualified.

The Commissioner:

Note the objection.

A. No, sir.

Q. Now did you make any observation with respect to these valves when you first found them, as to whether they were open or closed or to what extent?

A. They were found with the valve stem half a turn towards the open position, which was marked by a hacksaw at Mr. Miller's request.

Q. Will you show us the hacksaw mark or marks?

A. Here (indicating) is a hacksaw mark on the stem corresponding to the hacksaw mark near the packing nut of the valve.

Q. I take it what you did was to draw the blade across between the stem and the nut and have the teeth-marking mark the packing near the nut at the same time?

A. Yes.

Q. Take this valve here marked "125"; is that now in the position in which it was when you found it?

A. Yes, sir.

Q. Now will you turn it in the position toward closing?

A. This is towards closing (indicating with valve).

Q. How much of a turn is that?

A. I would say approximately one-third of a turn.

Q. That is the way you found it?

A. Yes.

Q. How about the other valve?

A. The other valve was open approximately the same amount, and marked in the position in which it was found with the hacksaw; in that (indicating) position.

Q. Is it now in the position in which you found it?

A. Yes, sir.

Q. Turning it in that position (indicating), how much of a turn is that?

A. Approximately one-third of a turn.

Q. This is Crane valve 150?

A. Yes, sir.

Q. Could an explosion or fire affect a valve like this so as to alter its adjustment from what it was before the fire in your opinion?

Mr. Underwood:

Objected to; not qualified.

A. It could, yes, but the valves at the time they were found—any valve in proper condition is tight and not as easy to move as this one, due to the fact that the packing in the packing nut is moist, loosening the stem of the valve; in other words, it would not be as easy to turn with a piece of debris flying by it as it is now.

Q. The only way the adjustment could be altered would be for a piece of debris striking the handle?

Mr. Underwood:

I object to the form of the question.

A. Yes.

Q. A handle of this round type. Would that in your judgment be likely to happen?

Mr. Underwood:

I object to that as speculative.

The Commissioner:

Note the objection.

A. It would not be likely to happen.

Q. Did anyone else, from the time you were there, touch these valves except you up until the time you determined their position?

A. No, sir; I carried them ashore.

Q. And that is true of the tank valves, also?

A. Yes.

Q. You were the first one to touch them?

A. I was the first one to touch them, yes.

Q. I think you spoke of one of these valves as being, in your opinion, without opening it, a valve with a composition seat.

A. Yes.

Q. Is a valve with a composition seat a proper valve to use in a gasoline line?

A. Not in my opinion.

Q. Why not?

A. Because the dew and the salt water and moisture penetrates the seat and creates a leak.

Q. What is the significance of the markings on these valves: Crane 150 and Crane 125?

A. Indicates the pressure for which the valve is built.

Q. Steam pressure?

A. Steam or hydraulic.

Q. Going back to this trap, which is a part of Exhibit 17, are you familiar with this device?

A. Not that particular device.

Q. I mean are you familiar with devices of that type?

A. Yes, sir.

Q. How should that be closed at the bottom?

A. That should be closed with a plug if there is any opening at all.

Q. Could you tell me whether this trap was closed with a plug in it or not?

Mr. Underwood:

I object to that on the ground that the witness cannot possibly know how the thing was closed before the fire?

A. This trap wasn't closed with a plug due to the fact that the broken-off pipefitting is still inserted in the bottom of the trap.

Q. Would it be proper to have any kind of a pipe connection on the bottom of a trap of that type in a gasoline line?

A. It would generally be considered improper installation.

Q. Why?

A. Due to the danger of breaking off and damaging the entire pipe connections that might be connected to the bottom of the trap.

Q. If whatever connections were on the bottom of a trap like this were broken off what would be the result?

A. Gasoline leakage.

Q. Gasoline would flow out?

A. Yes, sir; in the ordinary make of trap gasoline would flow out.

Q. Well, a trap of this type of construction.

A. I do not know the construction of that particular type of trap, but if the body of the trap contains gasoline there is no reason why gasoline should not leak out.

Q. Can you tell by any simple test whether that was open to the gasoline line?

A. The bottom of the trap was open to the gasoline line.

Q. Can you determine that by blowing through it?

A. You mean determine that by blowing through it?

Q. Yes.

A. Yes, you can determine that by blowing through it.

Q. Have you had considerable experience in connection with the construction and installation of gasoline tanks?

A. Yes, sir.

Q. What can you tell us about the tanks that are used for gasoline tanks on the Seminole, as to their suitability for that purpose?

A. In my opinion they are not suitable—

Mr. Underwood:

Objected to; not qualified.

A. —due to the fact that they were convex bottoms and not accessible and due to the fact that the caulking seams around the entire head of the gasoline are resting on the inside of the tank and on the fluid side, whereas the proper and common practice in the construction of gasoline tanks is to place the caulking seams on the outside where they are open for inspection at all times.

Q. Can you draw us a diagram of the tanks constructed as those were on the Seminole?

A. Yes (draws diagram); that was the construction of the tanks in the Seminole.

Q. Now will you explain that to us; first of all, this is the bottom at this end of the sheet, is it not?

A. That is the bottom of the tank.

Q. All right.

A. The caulking seams in this case would be on the outside and not on the liquid side; the entire head would be resting on the caulking seams, with the liquid forcing the caulking seams outward, instead of the common practice in all shipbuilding tank construction; there would be no way of inspecting the caulking seams that the tank is resting on at all times, and the common practice is to inspect all tanks at regular intervals, due to the fact that rust created from moisture, and particularly in the case of upright tanks, will force these two sheets apart to the extent that it will create leakage, and these tanks were not accessible from any side whatsoever, nor were the rivet rows accessible for inspection. Do you want me to make a sketch of a properly constructed tank?

Q. Yes.

A. (Makes sketch.) Now I will indicate the rivets if you will allow me. The caulking seams would be there, there and there (indicating). That caulking is done

with electric-driven hammers, forcing the soft metal into the groove and making it a tight job.

Q. As I understand it the caulking is a matter of taking the sheets and forcing a part of the metal against the—

Mr. Underwood:

I suggest that you let the witness testify.

A. The caulking is done by way of forcing part of the metal of one sheet against part of the metal in the other sheet, creating a tight joint.

Q. Would it be advisable to build a tank like this without having a manhole or handhole in the end?

A. No, sir, and if so it would be improper construction because the caulking seams could not be inspected and the condition of the metal could not be inspected without a suitable manhole, which is generally located in one or the other sides of the tank.

Q. Under this larger diagram I have written "bottom" and right below that I will write "Seminole tank", and under the other diagram at the top I will write "proper tank".

Now where was the outlet from which gasoline was drawn with respect to the bottom of this tank?

A. I would say from memory approximately five inches above the edge of the cylindrical sheet of the tank.

Q. You have indicated a valve outlet on the side of the tank above the bottom, is that right?

A. Yes, sir.

Q. Now with the valve outlet in that position and the tank in an upright position would it or would it not be possible to drain the gasoline entirely from the tank?

A. It would not be possible to drain all of the gas from the tank.

Q. It would flow out down to the level of the valve and no farther, is that right?

A. Exactly.

Q. If you have a tank constructed like that and the bottom continually filled with gasoline over a period of years, what will the effect on the tank be?

Mr. Underwood:

I object to that as calling for a conclusion of the witness.

A. What would the effect of the gasoline on the tank be?

Q. Yes.

A. Gradually create a leak, particularly if moisture is evident in connection with the gasoline.

Q. How long would you say from your experience that a tank so constructed would remain tight after once installed, the maximum period?

Mr. Underwood:

I object to that on the ground that the witness has not been qualified.

A. I would say that the maximum period would be three years.

Q. Now with these tanks installed in this compartment as they were would there be any possibility of inspecting and testing these tanks to determine whether they had begun to leak or not?

A. There would not be a possibility of inspecting the tanks. There would be a possibility of testing the tanks, but in the event of a leak you would never be able to determine its position.

Q. Why wouldn't you be able to determine its position?

A. Due to the fact that you couldn't get close to the weaker spots and most likely positions of leaks in the tanks.

Q. You mean you couldn't get in a position to observe them; is that right?

A. Yes, that is what I mean.

Q. What did these tanks rest on, or do you know?

A. I don't remember.

Q. In their position in the vessel how were the bottoms of the tanks with respect to the water-line of the vessel?

A. Below the water-line.

Q. Under these conditions would it be possible to install a tray under them with an outlet overboard to carry off any gasoline leakage?

A. Not without sinking the vessel due to water coming from the same connections.

Q. You couldn't have an open connection at that level in the side of the ship?

A. No, sir.

Q. If a vessel like this were laid up for a period of time what would be the precautionary requirements that would have to be taken for safety?

A. The precautionary requirements that should be taken and that are ordinarily taken are to empty the tanks of all gasoline; to assure proper ventilation through the vessel; clean the bilges thoroughly; to remove all fire hazards such as batteries for open light and check up on oil leaks and other objects that may cause combustion.

Q. How long would it take a crew of two or three men to lay up a boat of this type properly, taking the precautions you have just mentioned?

A. If the bilges were properly cleaned it would take three men, in my estimation, approximate two days to lay her up in a proper way to insure safety of the vessel.

Q. What would you say of the importance of ventilation as a requirement of safety in a case of this kind—

Mr. Underwood:

I object to that on the ground that the witness has not been properly qualified, and on the ground that the question is hypothetical and the facts are not properly included.

A. Proper precautions should be taken in a case of this kind to open the skylights for ventilation whenever weather permitted and to properly and continually open the cowl ventilators and turning towards the wind for assurance of proper ventilation throughout the vessel.

Q. Now if this vessel, the Seminole, was laid up in a shed for a period of two months approximately without any attention being given to her engineroom, would that in your opinion meet the requirements of the proper care with respect to ventilation?

A. No, sir.

Mr. Underwood:

I object to that on the grounds heretofore stated.

Q. Did this vessel have cowl ventilators, or do you recall?

A. It had deck cowl ventilators as far as I remember; it had two leading to the engineroom of an approximate diameter of 14 to 16 inches.

Q. I show you this picture and ask you can you tell me what that is?

A. It is a view of the deck of the engineroom as I last saw it, with the two ventilators showing in two corners of the picture; the entrance hatch in the corner opposite the skylight opening as far as I can determine.

Q. Which is the skylight opening and which is the entrance hatch?

A. As far as I can determine that is the skylight opening and this is the engineroom opening—engineroom hatch opening.

Q. Which was the farther aft?

A. The engineroom hatch was the farther aft.

Q. Look carefully at the picture and see if you can tell whether it is looking aft or not?

A. I would say that it is impossible to determine; my statement is based on memory.

Mr. Underwood:

Before we go any further let's mark the things that he indicated; mark that as the hatch and that as the skylight.

Q. You have marked two openings here which I will mark 1 and 2, and your present recollection is that number 1 is the hatch and number 2 is the skylight opening, is that right?

A. That is my recollection; whether I am turned around as to the position of the vessel I don't know.

Q. If it should turn out that number 2 was farther aft, then number 2 would be the hatch opening, is that right?

A. Yes, sir.

Q. These two objects that are so much crushed here are the ventilators?

A. Yes, sir.

Mr. Matteson:

First of all, I want to offer the diagram previously made by the witness.

(Thereupon the diagram above referred to and offered in evidence was marked Libelants' Exhibit No. 21.)

Mr. Matteson:

I now offer the picture in evidence.

(Thereupon the photograph above referred to and offered in evidence was marked Libelants' Exhibit No. 22.)

Q. Do these or did these ventilators extend below the deck of the Seminole?

A. No, there is no indication of any extension below the deck.

Q. Now was there any method on the Seminole of ventilating the tank compartment?

A. I didn't see any.

Q. Would you say that there was apparently none?

Mr. Underwood:

I object to that; calls for the conclusion of the witness.

The Commissioner:

Note the objection.

A. There was apparently no ventilating system of any kind for the tank compartment of the Seminole.

Q. After you completed your investigation of the wreck after the ship had been raised, did you make a report to any one or did anybody ask you for a report as to the result of your investigation?

A. Mr. Riley asked for a report.

Q. Who is Mr. Riley?

A. This gentleman here (pointing).

Q. Outside of being "this gentleman" who is he?

A. The gentleman with the blue necktie and the gray suit.

Q. In what capacity did he ask you for that report?

Mr. Underwood:

I object to that—

A. I met Mr. Riley as the representative of the owners of the Seminole; and Mr. Miller said "of the Phipps estate"—

Mr. Underwood:

I object to what Mr. Miller said.

Q. In any event, Mr. Riley asked you for the report?

A. Yes, sir.

Q. And as the result of that request what did you do?

A. Made a report on what I had seen and what I decided was the primary and secondary causes of the explosion.

Q. Did anyone else ask you for a copy of the report?

A. Yes, Mr. Miller, the District Attorney.

Q. You did prepare that report, did you?

A. Yes, sir.

Q. To whom did you give the original or copies?

A. As I remember Mr. Riley got the original and Mr. Miller a copy.

Q. Have you your own copy at the present time?

A. No.

Q. Have you looked for it?

A. I looked for it this morning, yes.

Q. Can you identify this as a copy of your report?

A. May I read it?

Q. Yes.

A. Yes, I would say that this is a true copy of my report.

Mr. Matteson:

Mark this for identification.

(Thereupon the copy of the report above referred to was marked for Identification as Libelants' Exhibit No. 23.)

Q. I think you said, Mr. Holm, that you volunteered your services up there and that you were not soliciting business. Did you as a matter of fact receive some compensation for what you did up there?

A. Yes, I received a check for \$50 from Mr. Miller as a present for services.

Q. What was that for, do you know?

A. For aiding in removing the body and for searching for the body.

Q. Was there anyone else present at any time during the operations there representing the owners of the vessel other than Mr. Riley that you know of?

Mr. Underwood:

I object on the ground that it calls for the conclusion of the witness.

A. I don't know.

Q. There is one thing I want to go back to just for a moment: when you were pumping out the boat and you saw this substance coming to the surface of the water in the engineroom as you have described it, which you later determined was gasoline, who was present with you at the time that that was observed; who was there that observed that besides yourself that you know of?

A. Ben McCoy and Jack Lowney.

Q. Do you remember Captain Patten?

A. Captain Patten was there.

Q. Now these tanks, with their outlets four or five inches above the bottom, would all necessarily have gasoline in them to that extent?

A. Surely.

Q. Now if the lines were broken and the water came in and had access to the tanks, what would happen in the tanks?

A. The water would displace the gasoline and raise its level.

Q. Then if the water was pumped out again what would be the last to leave the tanks?

A. The lower part of the gasoline body would be level with the outlet in the tank.

Q. Suppose all of the leakage drained out that could come out through the opening five inches from the bottom, what would be left in the tank then?

A. The water.

Q. So that in the course of that operation what gasoline was left in the tanks would come out, is that right?

A. Yes, sir.

Q. Now you observed the quantity of the gasoline that did come out there. Can you tell us in your judgment from what you observed whether the last remaining five inches of gasoline in each of these tanks would have been sufficient to account for the quantity of gasoline that you saw come into the engineroom or whether the quantity that you saw in the engineroom gives you any opinion as to the quantity that must have been in the tanks?

Mr. Underwood:

I object to that as being speculative, and no proper foundation laid.

The Commissioner:

Note the objection.

A. The quantity contained in the vessel at the time of our pumping and raising the vessel I should say would be much superior to the quantity that could be contained in the tanks from the drain valves down—

Q. Of course it would be impossible to make any accurate estimate.

A. I could not make any accurate estimate of that at all.

Q. One more thing I want to ask you: your assistant was Jack Lowney, I believe you said?

A. Yes, that is true.

Q. Where is he; what has become of him?

A. I don't know; I wish I did.

Q. What was the last you saw of him?

A. The last I saw of Jack Lowney was two months ago in our mines at Marian, Kentucky.

Q. What happened then; the only point is that—you don't know where he is now?

A. I don't know where he is.

Q. You have no means of—

A. I am looking for him to get him to make a bad check good.

Mr. Matteson:

Your witness.

The Commissioner:

We will adjourn until eleven o'clock tomorrow morning.

(Whereupon an adjournment was taken to 11:00 o'clock A. M., January 24, 1939.)

January 24, 1939, 11:00 o'clock A. M.

Hearing resumed pursuant to adjournment.

Appearances same as heretofore noted.

190 Thereupon CARL HOLM, a witness produced in behalf of the Libelants, and having been previously sworn, resumed the stand and testified further as follows:

Cross Examination.

By Mr. Underwood:

Q. Mr. Holm, were you ever aboard the Seminole before the fire?

A. No, sir.

Q. How many separate times were you aboard it there while you were diving and helping around?

A. I would say I was there practically continually until I left.

Q. You got there on the morning after the fire?

A. Yes.

Q. That was Tuesday?

A. I don't remember the day of the week.

Q. What time of the day did you get there?

A. I don't remember that. I dare say it was six or seven o'clock.

Q. In the morning?

A. Yes, as far as I remember.

Q. That was the day you dove for the body and were unable to find it?

A. Exactly.

Q. And the pumping began sometime that night?

A. The pumping started sometime that night.

Q. And you found the body the next day?

A. I found the body very early the next morning.

Q. Were you on the boat after the body was removed?

A. Yes, sir.

Q. For how long?

A. I dare say four or five hours.

Q. What time of the day did you leave the boat for the last time?

A. As best I remember it was about noon.

Q. Have you been aboard it since?

A. Yes, sir.

Q. When?

A. When I was removing some of the other boats from the yacht basin, the wreckage of some of the other boats from the yacht basin.

Q. Do you remember when that was; what date?

A. Approximately a month after the fire.

Q. Where was the Seminole then?

A. It was laying in New River.

Q. It was across the river from Pilkington's?

A. On the bank there, yes.

Q. What was your purpose in going there on that day?

A. Merely crossing the boat in order to get to a steel barge.

Q. Were you in the engineroom?

A. No.

Q. Have you been aboard her since?

A. No.

Q. So that your presence on the Seminole was from the morning of the day after the fire until about noon of the day after that and once a month later approximately when you merely walked across her?

A. I saw the Seminole several times during the period of removing the wreckage.

Q. I am talking about when you were aboard of it. Am I right in saying that you were aboard of her from sometime early in the morning of the day following the fire, off and on continuously perhaps until about noon of the following day?

A. Yes.

Q. And the only other time was when you walked across her about a month later?

A. I might have been aboard her during the period of looking—I am unable to answer that question other than to say I might have been aboard her several times, and I might have stepped across her in removing some of the other boats, yes. We moved the Seminole for the yacht basin and tied her up to the bank on the other side of the canal.

Q. Were you down in the engineroom on that occasion?

A. I don't remember.

Q. Do you remember?

A. No, I don't remember whether I was or not; if I was it was just walking through it for a moment.

Q. Do you remember whether you were or not?

A. No, I don't remember.

Q. The only times you remember now being aboard the Seminole were when you got there the morning following the fire and until noon of the next day—in the engineroom?

A. Yes, that period was spent practically all in the engineroom.

Q. You don't remember being in the engineroom any other time?

A. I may have been there but I don't remember.

Q. While you were there on the day following the fire and the day after that, did you make any notes of your observations?

A. Yes, sir.

Q. What did you make them on?

A. I made notes on the little tags that were made fast to the exhibits you saw yesterday.

Q. Anything else?

A. I may have made notes in—

Q. Did you or didn't you?

A. I would say that I made notes.

Q. Where are they?

- A. I don't know.
- Q. What did you make notes of?
- A. Of the conditions in the engineroom for one thing.
- Q. What did you do with those notes?
- A. I don't know.
- Q. What did you make them for?
- A. For the purpose of remembering the conditions.
- Q. When did you last see them?
- A. Condition of the boat notes?
- Q. The notes.
- A. Probably three or four months after they were made.
- Q. Where did you last see them? Who had them?
- A. I imagine they were in my car--no, I don't know.
- Q. Did you consider them important?
- A. No.
- Q. What did you make them for?
- A. I make my own notes on all my jobs.
- Q. Where are the notes now?
- A. I don't know.
- Q. You have not seen them since how long ago?
- A. Probably three or four months after the fire.
- Q. You have not seen them since then?
- A. No.
- Q. Who did you give them to?
- A. I don't know whether I gave them to any one.
- Q. Your mind is a complete blank about that?
- A. Yes, it is blank.
- Q. You are sure of one thing, that you have not seen them since four or maybe five months after the fire?
- A. No, with the exception of the report we saw yesterday.
- Q. I am talking about notes?
- A. No.
- Q. You have not seen those notes since four or five months after the fire, is that right?

A. Yes; I didn't consider them important at any rate.

Q. Did you keep a copy of your report?

A. Yes, sir.

Q. When did you last see that?

A. April, two years ago.

Q. Who did you give that to?

A. It was in my office in 806 Biscayne Bank Building.

Q. Where is it now?

A. I don't know; I looked for it yesterday morning and didn't see it anywhere.

Q. Did you give it to somebody?

A. I loaned it to Mr. Batcheler for the purpose of allowing him to make a copy.

Q. When was that?

A. To the best of my memory, sir, about three years ago; the day and month I don't know.

Q. You have not seen that copy since that time?

A. I haven't seen the copy since April two years ago. I went through my files in the Biscayne Bank building and saw a copy of the report there.

Q. How long ago was that?

A. April, two years ago.

Q. Now you mentioned yesterday a school that you went abroad at the tender age of fourteen.

A. Yes, sir.

Q. What was the name of that school?

A. The naval school for boatbuilders and shipbuilders of Copenhagen, Denmark.

Q. That is the name of it?

A. I don't know that there is any other name for it.

Q. Who maintained the school?

A. The Danish Navy.

Q. Were you enlisted in the navy?

A. Yes, sir.

Q. At the age of fourteen?

A. I didn't enlist as an enlisted man at the age of fourteen.

Q. Were you enlisted as a cadet of some sort?

A. They maintained that school for the purpose of instructing young people in the art of ship construction, boatbuilding, naval architecture and everything that has to do with ships.

Q. Did you receive some sort of a degree when you graduated from there?

A. You got a paper stating that you have passed as a ship constructor or shipbuilder or ship carpenter or boatbuilder or whatever it is.

Q. Did you get such a certificate?

A. I have a certificate.

Q. What does it say? Do you have it with you?

A. No, I haven't, but I had a certificate.

Q. Are you a certificated boatbuilder?

A. Yes, sir.

Q. Are you a naval architect?

A. No, sir. I studied naval architecture but I would not be considered a naval architect in this country. I spent four years studying naval architecture, however.

Q. Your course in boatbuilding had primarily to do with wooden or steel vessels?

A. Both.

Q. What did you do in that school; did you actually do the constructing; did you drive any rivets?

A. Yes, sir.

Q. You got right down and did the dirty work, is that the idea?

A. Absolutely.

Q. Have you ever prepared a design for any vessel?

A. Yes, sir.

Q. What kind?

A. Small gasoline-driven sail vessels.

Q. How many?

A. Four or five.

Q. Were they built?

A. Yes.

Q. According to your design?

A. Yes, sir.

Q. Where?

A. Two built in Copenhagen and one at Daytona Beach.

Q. Were they fishing boats?

A. Two of them were fishing boats.

Q. What size?

A. It is my recollection that the ones built in Copenhagen were respectively 30 and 40 feet.

Q. What sort of housing did they have?

A. Pardon me. I never heard of housing on a boat, sir.

Q. Were they open boats?

A. No, sir.

Q. How many persons did they accommodate?

A. They were not built to accommodate persons; they were built for commercial purposes, fishing.

Q. No sleeping quarters?

A. Sleeping quarters for the crew.

Q. How many?

A. Four.

Q. Both boats?

A. Yes, sir.

Q. How about this one up at Daytona Beach; what kind of a vessel was she?

A. She was a 30-foot pleasure cruiser.

Q. What is her name?

A. "Carl Holm".

Q. She was built for you?

A. No, she was built for the Mathews Boatyard.

Q. You built it for yourself?

A. No, built it for Mathews Boatyard.

Q. For the Boatyard?

A. Yes, for Mr. Mathews.

Q. What type of boat was she?

A. Pleasure cruiser.

Q. How many persons did she accommodate?

A. Four to the best of my recollection.

Q. Where is she now?

A. I don't know.

Q. What did you have to do with her planning and construction?

A. I laid the frame all out; I laid the boat out, together with Mr. Mathews and under his supervision.

Q. Was she steel or wood?

A. Wood.

Q. What was her power?

A. As far as I remember 150 H. P. to an engine.

Q. Are those the only two vessels that you have had anything to do with the construction of?

A. No, sir. I cooperated in the construction of the W. M., had charge of the work for Ben McCoy.

Q. That was one boat you mentioned?

A. Yes.

Q. What sort of a vessel was she?

A. 69-foot houseboat.

Q. Where was she built?

A. She was built at Holley, Florida, about three miles north of—

Q. What did you have to do with her design or construction?

A. I planned her and assisted in installing the engines; laid her deck; built the deckhouse and assisted in finishing the boat in its entirety.

Q. Who drew the plans?

A. Bill McCoy.

Q. Any more boats that you had anything to do with in that connection?

A. Built a tender for the Willowemoc.

Q. Any more?

A. I designed a boat for R. L. Denton, Manager of the Pan-American Airways. The construction was never finished; he died before it was finished.

Q. Any more?

A. Not that I remember, sir.

Q. Have you told us the full extent of your experience with designing and construction now?

A. I would not say I have; there may be more of them.

Q. Tell me all that you can right now?

A. You expect a lot of my memory.

Q. You have given us an example of a very particular memory about some things.

A. Unless you desire to wait, sir, I prefer to call that all for the moment.

Q. You have had this subject in mind for at least the last two or three days.

A. This subject of the Seminole?

Q. And your qualifications.

A. I wouldn't say that.

Q. You discussed it before testifying here yesterday?

A. As to my qualifications?

Q. As to your experience.

A. Somewhat.

Q. So that you have had it in mind?

A. I have had it in mind.

Q. For at least two or three days?

A. Not for two or three days, no.

Q. When did you begin to discuss your testimony before giving it yesterday?

A. Yesterday morning.

Q. So that at least since yesterday morning you have considered from time to time your experience so that you could state it on your testimony here yesterday and today?

A. Not the entire time.

Q. Of course not but from time to time?

A. From time to time.

Q. And you have told me now all that you can recall about your experience in the design and construction of boats, is that right?

A. All I can recall, yes.

Q. Now you told us yesterday about speaking with someone over the telephone on that afternoon of the fire. With whom did you speak?

A. Mr. Miller who I believe was District Attorney of the county next to it.

Q. Did you call him up?

A. Yes.

Q. Where did you get him; in Ft. Lauderdale?

A. I didn't call him; I called the Pilkington Boatyard.

Q. Did Miller tell you that he was Pilkington's lawyer?

A. No, sir.

Q. Not on the telephone?

A. Not that I remember.

Q. When did he tell you that he was Pilkington's lawyer?

A. I don't remember.

Q. When did you find out that he was the County Attorney?

A. I believe he introduced himself as the District Attorney when I met him.

Q. At Pilkington's Yacht Basin?

A. Yes.

Q. That was on the following morning?

A. Yes, sir.

Q. Didn't he also tell you that he was Pilkington's lawyer at that same time?

A. I am sure he didn't.

Q. You know him only as County Attorney?

A. Yes, sir.

Q. Where did you first meet Mr. Riley?

A. Where?

Q. Yes.

A. At Pilkington's Yacht basin.

Q. Who introduced you to him?

A. I don't recall, sir.

Q. Did you have any conversation with anybody apart from Miller before you met Riley?

A. Yes, I had a conversation with several people.

Q. Isn't it a fact, Mr. Holm, that you were asked to come there for the purpose of finding the body by a person other than Miller?

A. No.

Q. Do you remember a man by the name of Clark?

A. I remember several people by the name of Clark.

Q. At Ft. Lauderdale?

A. No.

Q. Did you ever see or talk with a man named Clark at Pilkington's at Ft. Lauderdale the day you got there?

A. There was a Captain Clark, I believe, on the premises.

Q. What was he Captain of?

A. He was Captain of the Willowemoc at that time.

Q. Do you remember anybody else named Clark?

A. No.

Q. When you met Riley had you been asked by Miller to do anything on the boat?

A. Yes, to note everything of importance in the engine room and remove the objects that you saw yesterday.

Q. Did Miller tell you what objects to remove?

A. I don't think he specified every object.

Q. Did he tell you to remove the gasoline can?

A. I didn't remove the gasoline can.

Q. Did he tell you to remove the drain valves?

A. Yes, sir.

Q. That was before you conversed with Riley?

A. Yes, sir.

Q. What was the condition of the Seminole at that time?

A. At the time I removed the objects?

Q. No, at the time Miller told you to remove the drain valves?

A. She had just been raised.

Q. When was this conversation with Miller; was it the first day you got there or the second day after you got there?

A. The second day.

Q. I am talking now about your first conversation with Miller?

A. My first conversation with Mr. Miller was over the telephone.

Q. The first conversation in person with Miller; was that on the early morning of the day you got there?

A. I don't remember.

Q. What time did you meet Mr. Riley?

A. I don't remember that.

Q. You have no recollection of that?

A. No.

Q. Had you had a conversation with that Miller person before you had your conversation with Mr. Riley?

A. Yes, sir.

Q. And what had Miller asked you to do in that conversation?

A. To remove the objects of importance lying loose in the engineroom and mark the valves in their respective positions.

Q. Did he ask you to remove the drain valves?

A. Yes—not specifically drain valves but all loose objects.

Q. He asked you to remove any loose objects?

A. Of importance.

Q. He didn't specify any particular objects?

A. Not that I remember.

Q. What was your conversation with Riley?

A. As far as I remember Mr. Riley introduced himself as a representative of the boatowners, and Mr. Riley asked to get my viewpoints in writing as to the cause of the fire, and Mr. Miller in turn, as far as I remember, asked to get a copy of the report.

Q. This was your first conversation with Riley?

A. I am not sure that it was discussed in my first conversation with Mr. Riley.

Q. Just tell me what you are sure about in your first conversation with Riley?

A. My memory is not good enough to state all that was discussed in the first conversation with Riley, sir, because everything was in a turmoil and I had been up all night and I was looking for a bit of sleep more than anything else when I met Mr. Riley.

Q. Did Riley ask you to remove the body or try to find it?

A. I believe Mr. Riley was there when we were searching for it and he expressed his appreciation of—

Q. I am talking now about your first conversation with Mr. Riley when you got there or soon after you got there. The first day you were there did he ask you to look for the body?

A. I don't recall, sir.

Q. Did he agree with you on a price for your services?

A. No price was mentioned.

Q. Did you tell him anything?

A. No, sir.

Q. Didn't tell him a thing?

A. As to price?

Q. As to anything else?

A. Well, I very likely told him the things in the vessel but I don't recall what things.

Q. Tell me what you remember telling him.

A. I don't remember telling him anything.

Q. You have told me all that you can about your first conversation with Riley?

A. I have told you all that I remember of any of my conversations with Riley. I will take that back. Pardon me. Not of any conversation I had with Mr. Riley.

Q. Do you remember anything more of your first conversation than you have already told us?

A. No, sir.

Q. Did you have any discussion with Mr. Pilkington?

A. Several.

Q. What did he ask you to do?

A. He asked me to do an awful lot of things, but exactly what things I don't remember.

Q. Do you remember anything that he asked you to do about the Seminole?

A. The only—one thing he asked me to do was to be very careful and not catch the gasoline on the surface of the water afire.

Q. Anything else?

A. Yes, he asked us to plug the holes a little more permanently when she was afloat.

Q. Did he ask you to remove anything from the boat?

A. He was with Mr. Miller when the question came up about the objects in question.

Q. Did Mr. Pilkington tell you that Mr. Miller was his attorney?

A. Not that I remember, sir.

Q. To whom did you deliver these objects that you brought from the boat?

A. To Mr. Miller.

Q. You gave them to Miller?

A. Mr. Miller, yes, and they were placed in the office of Pilkington's house—tagged and marked.

Q. What day was that?

A. To the best of my memory the day the body was removed; I don't recall the day of the week nor the day of the month.

Q. Were they wrapped in paper at that time or not?

A. Were they wrapped up in paper?

Q. Yes.

A. No, they were not.

Q. You delivered them to Mr. Miller in Pilkington's house?

A. Outside of Pilkington's house.

Q. What did you say Mr. Miller did with them?

A. I saw him place them in Pilkington's office—for how long I don't know.

Q. When you dove how deep would you say the water was in the engineroom?

A. Guessing, approximately five or six feet.

Q. Was it up to the window sill, do you remember?

A. Yes, as far as I remember it was above the window—no, as far as I remember it was below the window sill, just below.

Q. Was the boat resting on the bottom at that time?

A. I am not sure; she was resting on something.

Q. She was sunk?

A. Yes.

Q. What sort of equipment were you wearing when you were diving?

A. Helmet.

Q. Were you able to see under the water?

A. No.

Q. You had to go entirely by feel?

A. Absolutely.

Q. Can you tell me where you went in the engineroom during your dives?

A. I didn't get very much further below the hatch. I couldn't move very far due to the debris; I squeezed in between the two engines as far as I could and reached

forward and tried to climb over the engine and struck debris wherever I went and got my helmet caught twice.

Q. Through what opening did you go down into the engineroom; do you remember?

A. The hatch as far as I remember.

Q. Did you land in the engineroom between the two engines?

A. I landed in the engineroom below the hatch.

Q. You went right down through the engineroom hatch?

A. Yes.

Q. Did that bring you out between the two engines?

A. Not exactly between the two engines; no, sir.

Q. Well, on which side?

A. I don't recall whether the hatch was a little towards the starboard side of the vessel—I believe the hatch is towards the starboard side of the vessel.

Q. How far forward of the after bulkhead were you when you landed in the engineroom?

A. As far as I remember, three or four feet.

Q. Did you walk forward between the two engines, towards the forward part of the engineroom?

A. As far as I could on account of the debris.

Q. You don't know how far that was?

A. No, I don't recall.

Q. You didn't get up to the forward end of the engines?

A. It was impossible to get to them.

Q. Then where did you get?

A. I tried to climb over the two engines.

Q. Were you able to do that?

A. Not all the way to the bulkhead.

Q. Did you get over one of the engines?

A. I reached over the engines.

Q. Did you climb over?

A. No, I couldn't climb over.

Q. You were walking on debris, I suppose?

A. Yes; such a mess of debris that you couldn't tell where you were.

Q. You couldn't tell where you were walking?

A. No.

Q. You didn't get forward of the forward end of the engines?

A. No, sir.

Q. You didn't get on the outboard side of either engine?

A. I believe I did get on the starboard of the starboard engine.

Q. Climb over it?

A. Over the aft end of it.

Q. You climbed over the aft end?

A. From the hatch. I inspected the engineroom as well as possibly could be done.

- Mr. Underwood:

I move to strike the answer as not responsive.

Q. All I want you to tell me is where you went.

A. Can a blind man tell where he goes?

Q. Most blind men can. Can you?

A. No, sir.

Q. You don't know where you went?

A. I went in the engineroom.

Q. I want you to give me your best recollection as well as you are able to where you went?

A. My best recollection is that I went through the hatch in the engineroom with my diving helmet and inspected the engineroom as far as could be done without being able to say whether I was on the starboard side of the starboard engine or in the center of the engineroom on account of the debris, and I am not able to tell you any further.

Q. You told me that you walked forward between the two engines. Are you sure of that?

A. You couldn't walk.

Q. Climbed.

A. I climbed over one engine as far as a man could climb in the debris there; whether I climbed towards the starboard side or towards the port side I don't recall; the hatch took me down either on the starboard side of the starboard engine or in the alley between the engines as far as I remember.

Q. Now do you remember bringing up anything, any parts of the Seminole, from your diving?

A. I brought up part of the switchboard.

Q. Where is that?

A. It is below the hatch—

Q. Where is it now?

A. I don't know, sir. I gave the part I brought up to Mr. Miller.

Q. Is it here in Court?

A. No, it was merely part of the slab, just part of the slate. It had no bearing on it.

Q. Just a part of the slate?

A. Yes.

Q. No connections of any sort on it?

A. If there was any—

Q. Do you remember?

A. No, I don't remember.

Q. You gave that to Mr. Miller, however?

A. As far as I remember, yes.

Q. Do you remember who was doing the pumping on this boat?

A. A Ft. Lauderdale contractor by the name of West.

Q. You worked for him?

A. Did I?

Q. Yes?

A. No, sir.

Q. For West?

A. No, sir.

Q. While he was pumping the boat you were not working for him?

A. I was working to get the boat up.

Q. Were you working for West?

A. No.

Q. Didn't West pay you?

A. No.

Q. Who did pay you for your services there at that time?

A. At the time the boat was raised?

Q. The day you got there or the following day?

A. As far as I remember all I ever got paid was the fifty dollars that Mr. Riley presented me for services.

Q. You said that was a present, didn't you?

A. That was a present. He specified at the time that it was a present and I refused it at the time.

Q. You say he gave you a check for fifty dollars?

A. A check for fifty dollars.

Q. And you refused it and he insisted that you take it?

A. I refused the money because it is never a practice to charge for removal of bodies in cases involving fatal accidents.

Q. Did you give him a receipt for it?

A. If I gave Mr. Riley a receipt it was because he could recover his fifty dollars from other sources.

Q. Did you give him one? That is all I asked you?

A. I don't remember.

Q. Is this your writing; is that your signature (handing paper to witness)?

A. Yes, sir.

Mr. Underwood:

I offer it in evidence.

(Thereupon the receipt above referred to and offered in evidence was marked Respondent's Exhibit No. 1.)

Q. I believe you have told us that the body of Abel was found between the port engine and the forward bulkhead; is that correct?

A. That is correct, sir.

Q. And you found that on the morning of the second day you were there; is that right?

A. Yes, sir.

Q. Now at that time how much water was there in the bottom of the engineroom?

A. As far as I remember water was below the floor of the engineroom when we removed the body.

Q. And this concrete slab that you mentioned, where was that?

A. Covering part of the body.

Q. How big was the concrete slab; was it broken up?

A. Yes, it was broken up to some extent as far as I remember.

Q. Over how big an area did the concrete slab extend, the pieces?

A. I didn't measure it, sir.

Q. Well you were there and saw it.

A. As far as I remember an area of three to four feet.

Q. Three to four feet square?

A. As far as I remember.

Q. And that was only part of the debris that was there, I suppose?

A. Yes, only part of it.

Q. Now I would like you to tell me as accurately as you can where it was you found each of these pieces?

A. Do you want me over there?

Q. Yes, I think it will be more convenient if you will come over here. This can, Exhibit 13, where did you find that?

A. On the starboard side of the position where the body was found.

Q. Close to the body? You tell me how far from the body?

A. One to two feet.

Q. How far from the forward bulkhead?

A. Approximately the same distance.

Q. Now did you find Exhibit 13 yourself?

A. What do you determine finding an object?

Q. You tell me what happened; you were there and I was not.

A. I was stepping over the can several times probably before it was found.

Q. Who picked it up and brought it out?

A. I don't know.

Q. Did you?

A. As far as I know, no.

Q. Who did?

A. I don't know.

Q. Did you bring the funnel up?

A. As far as I remember I didn't.

Q. That is Exhibit 14?

A. Yes.

Q. You just simply stumbled over it and somebody else brought it up; is that right?

A. I didn't bring that up.

Q. You didn't think they were objects of importance then?

A. Not at that time, no.

Q. Now this Exhibit 18, did you find that and bring it up?

A. Yes, sir.

Q. Where did you find it?

A. In the aft part of the engineroom.

Q. Well be as specific as you can; between the engines or outside of the engines or where?

A. Approximately three or four feet ahead of the aft engineroom bulkhead.

Q. Between the engines or on the outboard side of either engine?

A. Below the position of the switchboard.

Q. That would be between the two engines.

A. As far as I know the switchboard was between the engines and the aft engineroom bulkhead.

Q. Was this attached to anything when you first picked it up, or was it free as it is now?

A. It was attached to the rest of the switch.

Q. Did you break it off?

A. No, sir.

Q. You didn't break it off but you picked it up and it came off?

A. Yes.

Q. When you first touched it it was attached to the switchboard?

A. No, sir; it was attached to the rest of that switch.

Q. But not the switchboard?

A. It may have been attached by strings or wires but no more than that, because it wouldn't have fallen apart.

Q. So the thing that you speak of as the rest of this switch was still attached to the panel when you brought this exhibit up?

A. Not to the panel.

Q. What was it attached to, if anything?

A. I wouldn't say it wasn't attached, with the exception of the wiring.

Q. It had been broken off from the panel itself?

A. Yes, the panel was all broken up and shattered.

Q. You didn't bring up the rest of that switch?

A. Not that I remember.

Q. Now Exhibit 11, these two drain valves, as you call them, where did you find them or did you find them?

A. Yes, I found them.

Q. Isn't it a fact that your helper is the man that first picked that up and said, "Here are the valves we have been looking for", and held them up and showed them to you?

A. I found them before.

Q. Then you put them back and let him pick them up; is that it?

A. No, it is not.

Q. All right.

A. I didn't touch them.

Q. Where were these when you first saw them?

A. They were laying on the engineroom floor in the debris.

Q. When you first saw them what did you do about them; did you pick them up?

A. When I first saw these valves I noticed the position they were laying in there and below what they were laying and then I picked them up.

Q. What did you do?

A. I notified Mr. Miller and Mr. Miller asked us to bring them up.

Q. Where were they when you first saw them?

A. Laying in the debris in the engineroom?

Q. And where in the engineroom?

A. Below the position of the pipe they were broken off of.

Q. It is plain, isn't it, that a pipe has been broken off from Crane 150?

A. Yes.

Q. When you first saw them that break had already occurred and this object was lying on the floor amongst a great deal of debris; is that right?

A. That is right.

Q. Do you say that you are the first one who picked those up?

- A. No, sir, I am not the first one that picked them up.
- Q. Who did?
- A. The helper I had with me picked them up and held them up in the air.
- Q. What did you see him do with them?
- A. I told him to place them where they were laying when he picked them up.
- Q. Did he tell you that they were open?
- A. Not as far as I remember.
- Q. Did you hear him say "these valves are open"?
- A. Not that I remember, no.
- Q. What did you see him do with them; did he just pick them up and put them down again?
- A. I told him to put them down where they were.
- Q. What else did you see him do with them?
- A. Nothing.
- Q. Just pick them up and put them down again?
- A. Yes.
- Q. What happened to them next?
- A. I picked them up.
- Q. You then picked them up?
- A. Yes.
- Q. That was before the top of the engineroom had been removed, wasn't it—the deckhead?
- A. Before the deckhead had been removed, yes.
- Q. When you were down below in there didn't you see that these valves were open?
- A. Yes, I tried the position of them right there.
- Q. You did?
- A. Yes, sir.
- Q. Both of them?
- A. Yes, sir.
- Q. You turned the stems?
- A. Yes, in his presence.
- Q. In whose presence?
- A. In my helper's presence.

Q. There wasn't anybody else down in the engineroom at that time, was there?

A. I believe Mr. Patten was there on top of one of the engines as far as I remember.

Q. Anybody else?

A. I don't remember.

Q. You turned the valve handles and said they were open?

A. Yes.

Q. And then you gave them to Patten, didn't you?

A. Yes, sir.

Q. Didn't he turn the valve handles or valve stems and say also that they were open?

A. I don't know; I don't remember that.

Q. Who passed them on top while you were going back up on deck?

A. Jack Lowney.

Q. Then you had to take them ashore before you marked them; is that right?

A. Yes.

Q. So that your mark there doesn't represent the position or condition of that valve when you first found it?

A. Positively.

Q. It represents, doesn't it, your recollection of how much they were open?

A. I noted very carefully how much they were open.

Q. You did turn the valves before you marked them, didn't you?

A. Yes.

Q. You didn't mark them first and then turn them to see if they were open, did you?

A. They were turned before I got hold of them.

Q. By Jack Lowney?

A. I don't know, sir. They were open.

Q. But you turned the stems before you marked them, didn't you?

A. Yes, sir.

Q. And then you found it necessary to put them back in the position in which you found them, in the position in which you thought they were before you marked them?

A. We marked them with a pencil in the engineroom and then later we marked them with the hacksaw blade.

Q. This is the first time you said anything about a pencil. You never said anything about that yesterday or today. When did you think of that?

A. When?

Q. That comes in your memory now?

A. I marked them with a pencil in order to secure the position until I got ashore and could mark them more permanently.

Q. Look at Exhibit 17. Where did you find that?

A. I found that close to the forward engineroom bulkhead.

Q. Starting athwartships, what did you find it near?

A. Near the auxiliary light plant.

Q. Between the port engine and the auxiliary light plant?

A. Between the port engine and the forward engineroom bulkhead, as far as I remember.

Q. Now is it your testimony that from the bottom of this trap there was some connection?

A. No, sir; not some connection.

Q. What did you say was there?

A. Pipefitting.

Q. Some pipe or fitting of some sort?

A. Yes, sir.

Q. Perhaps a plug?

A. No, sir.

Q. You say that could not be a plug?

A. Not a standard make.

Q. You draw a distinction between a plug and a standard make?

A. Absolutely; a plug would be of wood.

Q. And obviously that is not wood, is it?

A. No.

Q. You say it could not be a brass plug?

A. Not a standard make brass plug.

Q. It could have been a brass plug, couldn't it?

A. It would be considered a cap but not a plug.

Q. It could have been a brass cap?

A. The name "plug" means something to go inside of something else.

Q. Do you draw a distinction between a plug that is solid and a plug that is not solid?

A. Yes.

Q. So that you say this was not a solid plug?

A. Couldn't have been.

Q. It could have been a cap?

A. It could have been a cap.

Q. Now, one more thing here, Exhibit 2. Tell me just where you found that?

A. I found that below the opening of the number 2 gasoline tank.

Q. Counting from port to starboard?

A. Yes.

Q. And you have expressed the opinion that this valve is number 2 valve; is that right?

A. Yes, sir.

Q. How close was it; right up close to the bulkhead?

A. Yes, it was pretty close.

Q. Now these four tank valves, did you try all four of them?

A. Yes, I tried all four of them.

Q. I didn't quite understand your testimony yesterday as to how far open they were.

A. A valve is considered jamb-open when you have to use force to move the stem downward, and these were jammed down.

Q. It is your testimony that they were open as wide as they could be?

A. Yes, sir.

Q. All four of them?

A. Yes, sir.

Q. That is not true of the drain valves?

A. No, sir.

Q. They were open, I believe you said, about one-third of a turn?

A. Yes, about a third of a turn.

Q. Do you think they were open enough to let any gasoline run out that was in the tanks?

A. Positively.

Q. How much of a stream do you think you could get from these valves open one-third of a turn?

A. Guessing at it, a gallon a minute.

Q. If those valves had been open, left open when the boat was laid up, those four tank valves jambed down and the two drain valves open to permit a stream of a gallon a minute, it would keep the gasoline in the tanks until the time of the fire?

A. Nothing would keep the gasoline in the tanks with the drain valves and the four tank valves open; it would run into the bilges.

Q. Anybody looking into that engineroom under these circumstances could hardly help but notice such a condition; is that so?

A. It is so.

Q. You could smell it?

A. Yes.

Q. You could see it?

A. Yes.

Q. Now you have spoken about great quantities of gasoline coming out of these tanks while the boat was being pumped out or around the time when you were diving. Where do you suppose that gasoline actually came from?

A. There was some gas contained in the tanks due to the fact that all of the gas could not be drained out of the tanks while the boat was afloat, but the gasoline being displaced with water would raise the volume of gasoline in the tanks, and with the water discharging from the openings there would come a moment when the gasoline left in the tanks before the boat sunk would be discharged also.

Q. Do you say that is what you saw when you saw this bubbling up from the water?

A. That is part of what I saw.

Q. What was the other part?

A. I saw so many things that—

Q. I am talking now about this bubbling up that you speak of.

A. That is all I saw of gasoline escaping from the tanks.

Q. Now if these valves were jambed open before the fire and the explosion and the two drain valves were open to such extent that they would permit the flow of a gallon a minute, that would keep the gasoline in the tanks until you saw it come out?

A. The bottom of the tank—

Q. You could not have seen that those valves were open prior to the fire; you could not have seen any more gas come out than would stay in the tanks below the level of the valves, could you?

A. No, if there was free escape for the gasoline before the boat sank.

Q. You remember one of the engineers of the boat was there?

A. No, I don't remember.

Q. You don't remember a man pointed out to you where some of the openings in the hull were?

A. Yes.

Q. Do you remember such a man?

A. Yes, sir.

Q. Do you know his name?

A. No, sir.

Q. Did you know that he had been an engineer on the boat at one time?

A. I knew that he must have been on the boat because he knew the boat and its seacocks and sea-connections very well.

Q. You had a conversation with him about whether the tanks were empty when the boat was laid up, didn't you?

A. Yes, sir.

Q. And he told you that they were practically empty, didn't he?

A. Yes, sir.

Q. He also told you that all of the valves were left closed, didn't he?

A. Yes, sir.

Q. You found no damage to the gas tanks themselves, did you?

A. Not as far as I could inspect them.

Q. You found them intact, didn't you?

A. Yes.

Q. Let's go back to this spring of gasoline for a moment; just where was that?

A. Coming up through the surface of the water.

Q. Where in the engineroom?

A. Near the engineroom forward bulkhead.

Q. Where?

A. Athwartships, near the port side of the vessel and one stream in the center of the engineroom athwartships, in the approximate center of the engineroom.

Q. I show you Exhibit 8, a sketch which you drew yesterday and ask you to mark on there where you saw this spring or bubbling up of gasoline?

A. I can only mark it approximate, sir.

Q. Do the best you can.

A. (Marks on diagram.) As I remember there was another leak further over that we plugged, a smaller leak, to the best of my memory.

Q. You have made three X's on here, is that right?

A. Yes, sir.

Q. One of them is just abaft number 1 tank?

A. Yes, sir.

Q. One of them is just abaft of number 2 tank?

A. Yes, sir.

Q. And one of them is just abaft number 3 tank?

A. Approximately.

Q. Making three springs of gasoline bubbling up through the water?

A. They reached the surface of the water.

Q. How big an area did they cover?

A. I didn't stop to take that into consideration.

Q. Were they as big as a pencil or as big as the Judge's wastebasket?

A. Probably as large as a lead pencil, two of them and one larger; we made a plug half an inch as far as I remember and two smaller plugs.

Q. Did you stop those springs?

A. As well as could be done in the circumstances, yes.

Q. Who put the plugs in?

A. I don't remember whether I put them in or whether my assistant put them in.

Q. But you did see what they were inserted into?

A. In the pipes, yes.

Q. Take the one that is just abaft the number 1 tank; what pipe was that put in?

A. As far as I remember into the nozzle of the valve.

Q. The valve on number 1 tank?

A. As far as I remember, sir.

Q. The one abaft number 2 tank, what was the plug put into there?

A. I believe a half inch pipe.

Q. Did the pipe run from the tank?

A. The pipe came from the starboard side of the vessel.

Q. Was that the pipe that you indicated yesterday as the drain line pipe?

A. I think it was, sir.

Q. Number 3, the spring just abaft number 3 tank?

A. As far as I remember it was coming out of a part of the gasoline manifold.

Q. Had that been broken off?

A. That had been broken off.

Q. And that you say was a mixture of the water that had gotten into the tanks while the boat was under, plus the gasoline that remained in the tanks, is that right?

A. It had been mixed but the major part of it was gasoline.

Q. How many gallons of gasoline do you think you saw in these three springs?

A. It all depends on the period of time that the springs would be active.

Q. Well you were there and saw them.

A. They could have been active long before I ever stopped them.

Q. How long did you see them?

A. Not very long; not very many minutes before I stopped the leaks.

Q. How much gasoline do you think came out of those springs?

A. How much do I think came out of the springs?

Q. Yes.

A. I can only guess at it, sir; judging from the position of the valves and from the gasoline that would have escaped if the valves had been in that position sometime before the vessel sank, I would judge that—

Q. I want you to tell me from what you saw and not from your calculations.

A. I can only make calculations, sir; no one could measure the quantity of gasoline escaping under such circumstances.

Q. Your surmise is "great quantities of gasoline"?

A. Yes, sir.

Q. You don't think it was a mere 20 or 30 gallons?

A. That would be considered "great quantities" of gasoline if you had to wade around in it with a fire above your head.

Q. What is the smallest number of gallons that you would call a great quantity of gasoline?

A. That all depends on the conditions.

Q. Under those conditions.

A. What is the smallest quantity that I would call a great quantity?

Q. Yes.

A. 25 gallons.

Q. Do you think you saw at least 25 gallons of gasoline?

A. I am sure of that.

Q. There may have been a great deal more?

A. Might have been.

Q. Couldn't have been any less?

A. Yes, could have been less.

Q. Substantially less?

A. No.

Q. It could not have been less than 24?

A. No, possibly not.

Q. Well now at the time you saw these springs, as you call them, the boat had been submerged below the surface of the water?

A. Yes.

Q. There was considerable oil on the water all over the Basin down there?

A. Yes, sir.

Q. Now getting back to this piece of switch, Exhibit 18, I believe you said yesterday that this was a part of the largest switch that you saw on the switchboard; is that right?

A. As far as I remember, yes.

Q. Do you remember where on the switchboard that switch was, or was the switchboard so battered at the time that you could not tell?

A. The switch was very badly damaged and I would not be able to determine the position of that switch.

Q. Now you spoke yesterday of the switch that was within a quarter of an inch of being closed; is this the switch you spoke of?

A. As it lay on the engineroom floor, yes.

Q. As it lay on the engineroom floor it was within a quarter of an inch of being closed; that is your recollection of it now?

A. That is my recollection.

Q. By the way, was that a two-way or one-way switch?

A. As far as I remember it was a one-way double knife-switch.

Q. You could only close one circuit with it?

A. As far as I remember, yes.

Q. Now you said something yesterday about how far open that switch would be if it were all the way open, how many inches it would be from the poles. Do you remember how much you said?

A. I think I said four to six inches or six to eight inches.

Q. Then if it were half closed it would be three to four inches from the poles, wouldn't it?

A. No, I wouldn't consider that half closed.

Q. What is your definition of "half closed" where the distance is six to eight inches?

A. I would consider a switch half closed when it is about arc and able to admit some current but not all of it.

Q. When you say "half closed" you don't mean that it is half way from the wide open position to the point of contact?

A. No, sir. A switch would be positively open when it is away from the other pole to the extent that no electricity could be admitted to the other poles.

Q. This switch that we are talking about was on the floor of the engineroom when you picked up this piece, is that right?

A. Yes, as far as I remember.

Q. It had been separated from the slab of the panel except by the wire connection?

A. Yes.

Q. It was no longer fastened by bolts or whatever its original fastening had been?

A. No, sir; I don't remember removing any bolts.

Q. It had been torn adrift in some way?

A. Yes, I think so.

Q. So then you don't know whether when the fire started this switch was in the position in which you saw it, do you?

A. I have no way of knowing that.

Q. While the pumping was going on and after you had dived and tried to find the body was the fire still burning in the shed?

A. The fire was still burning on the top of the poles above the shed, yes.

Q. Sparks dropped down from time to time?

A. Yes.

Q. Wind blowing?

A. I don't recall about the wind. We tried to put out the fire with fire extinguishers.

Q. The upright poles of the shed were still burning?

A. Yes, sir.

Q. Any fire still in the boat?

A. Not that I recall.

Q. Do these photographs that you saw yesterday and which were marked in evidence with your marks on them, represent the condition of things as you saw them the two days you were there?

A. As far as I remember, yes.

Q. I don't mean just structural but in every way.

Mr. Matteson:

Which photographs are you referring to?

Mr. Underwood:

All.

A. In every way?

Q. Yes.

A. That takes in a lot of territory.

Q. I am asking you.

A. No one's memory is good enough to remember whether Mr. Pilkington had a new roof on his house—

Q. I am just talking about the boat. You don't think I am interested in Mr. Pilkington's house, do you?

A. I don't know. May I look at them?

Q. Certainly. Take Exhibit 6 for example; is that just the way you saw things as far as the boat itself was concerned?

A. As far as I remember, yes.

Q. Is it your testimony that there has been no change between the 25th and 26th of June when you were there and the time this photograph was taken?

A. No one's memory is good enough to remember whether the pipes are laying in exactly the same condition they were then in, sir.

Q. If you can't say whether they correctly represent exactly what you saw all you have to do is to say so.

A. In general they represent what I saw at the time.

Q. Well, look at Exhibit 10.

A. As far as I remember some debris has been removed from the engineroom floor, for instance:

Q. Nothing but debris?

A. I would call the "hull" debris, sir.

Q. That statement I take it is true of the rest of these photographs?

A. In general yes.

Q. Now yesterday you expressed the opinion that it was not proper to have a drawoff valve in the engineroom; is that your opinion?

A. Yes, sir.

Q. And you gave your reason for that?

A. Yes.

Q. And you said for gasoline?

A. Yes.

Q. Now as far as the cause of this particular fire is concerned is that valve didn't leak or the line to it did not leak, it had no connection with the fire, did it?

A. I don't know. You say if they didn't leak?

Q. Yes; or were not open?

A. It could have had—no, I wouldn't say that if they were not open.

Q. Of course you don't know whether these valves were open or closed prior to the fire, do you?

A. No, I have no way of knowing.

Q. You don't know whether there were any leaks there or not, do you?

A. No.

Q. Now if they were not open and if they did not leak, they could not have had any casual relation to this fire, could they?

A. No, sir.

Q. So that even if they were, in your opinion improper construction they did not contribute to this fire, did they, on those assumptions?

A. If they didn't leak and if they were not open gasoline was not escaping from them, so there is very small chance of them having anything to do with the cause of the fire, with causing the fire, if what you say is right.

Q. Now you said that there was no shut-off valve on the line that runs to the two carburetors on the main engine and that there was no shut-off valve on the line that runs to the auxiliary light plant.

A. I didn't see any.

Q. Assuming that there was no shut-off valve at those places and assuming also that the tank valves were shut tight, the absence of shut-off valves could not have had anything to do with this fire, could it?

A. Providing the gasoline was drained from all lines outside of the tank valves.

Q. That is the only provision you want to add to my question, is it?

A. Will you ask your question again?

Q. The stenographer will read it.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. And providing the tank valves were not leaking and were in a closed position.

Q. Now you said with reference to Exhibit 2 that in your opinion there were too many elbows, too many connections; do you remember that?

A. Yes, sir.

Q. Well, if they didn't leak and were tight they didn't have any casual connection with this fire or explosion, did they?

A. If no gasoline was escaping from them, no, sir; very small chance of them having anything to do with the cause of the fire if they were not leaking.

Q. Now when you have a drip pan under a carburetor where does that gasoline go that goes into the drip pan?

A. In some cases it is spilled in the bilges; in other cases the drip pan is taken away from its position and the gasoline disposed of, and again in other cases gasoline in drip pans and other vessels is used by the engineer in cleaning his hands and so forth.

Q. Now if you had an engine unattended, and the valves open so that the gasoline goes to the carburetor and the carburetor overflows into the drip pan by and by the drip pan is going to overflow, is that right; assuming that you have enough gasoline in your tanks to fill the drip pan?

A. No gasoline engine could be unattended while in condition.

Q. Of course you understand that this boat had not been in condition for sometime?

A. Yes.

Q. But if you have a leak through your carburetor it is going to fill up the drip pan and overflow and get into the bilge, is that right?

A. Yes.

Q. So if you have no leak at your carburetor the absence of the drip pan is immaterial, isn't it?

A. It is a safety measure.

Q. But if you have no leak out of your carburetor it doesn't make any difference whether you have a drip pan or not, does it?

A. If there was no other car on the road I would not have to have brakes.

Q. Please answer my question.

A. My answer would be that providing you have no leaks and providing no gasoline is escaping, the absence

of the drip pan, would be immaterial at the time, but a permanent type of gas line—

Q. You understand that we are here interested in the cause of this fire?

A. Yes.

Q. Now isn't it a fact that if there was no leak from the carburetors on the Seminole the absence of drip pans was wholly immaterial as far as the cause of this fire is concerned?

A. It would be immaterial if there were no leaks.

Q. Now yesterday you spoke of the two valves which you called "drain valves"; you described them as steam and water valves; do you remember that?

A. Steam and hydraulic valves.

Q. Assuming that you are right about that, if they didn't leak the fact that they were not proper gasoline valves did not have any casual relation with this fire or with this explosion, isn't that a fact?

A. If they didn't leak.

Q. Now you were asked as to the possible purpose of having two valves on the end of a drain line; do you remember that?

A. Yes, sir.

Q. And you expressed as your first reason the thought that somebody might have had an extra valve they didn't know what else to do with; is that right?

A. Yes, sir.

Q. You were serious about that?

A. Yes, sir.

Q. You were?

A. Yes.

Q. Do you remember your second reason?

A. Yes, sir.

Q. What was that?

A. That the first valve might leak somewhere and placing the second valve, for the purpose of preventing the leak, on the nozzle of the first valve.

Q. You mean that as an extra precaution against leaks two valves were installed instead of one?

A. Yes, sir.

Q. That indicates an item of precaution, doesn't it?

A. Yes.

Q. You said that you did not approve of the fitting employed between the two valves; do you remember that?

A. Of the fittings between the valves?

Q. You thought the fitting was all right but that it wasn't put together properly, is that right?

A. The fitting was all right.

Q. If it didn't leak it didn't have any relation to this fire and explosion, did it?

A. If it didn't leak there would be very little chance of it having anything to do with the fire.

Q. What chance would there be of it having something to do with this fire and explosion if it didn't leak?

A. There could be so many causes for it, sir.

Q. How could it have contributed to this fire and explosion if it didn't leak?

A. Do you want me to mention all the reasons that I might think of?

Q. Yes, how this fitting between these two valves could have contributed to this fire and explosion if it didn't leak?

A. For instance, a man carrying an electrical appliance of some kind and in that way accidentally striking the head of the valve.

Q. Resulting in a leak?

A. No, not necessarily.

Q. How would that contribute to this fire and explosion if it didn't leak?

A. Connecting two bodies of different polarity might create a spark which could ignite any fumes which might be in the engineroom.

Q. Your suggestion is in effect that somebody might have bumped into it and caused a spark?

A. Yes, sir.

Q. All right; any more ideas?

A. A man might bump into a valve and having matches in his pocket that might strike and—you are asking for reasons, sir.

Q. I am listening. Let me narrow my question a little bit: Can you tell me in what way this fitting, which you say is made up wrong, could have contributed to this fire and explosion without the intervention of some human being. In both instances you have given me you had men moving and doing something.

A. I can't think of anything without the human element.

Q. If it leaked it should not have leaked, is that true?

A. Yes.

Q. And if it didn't leak it did not contribute itself, without the intervention of some other happening, is that right?

A. Yes, sir.

The Commissioner:

We will recess until two this afternoon.

(Recess taken to 2:00 P. M., January 25, 1939—same day.)

January 25, 1939—2:00 o'clock P. M.

(By Mr. Underwood):

Q. Mr. Holm, I want to get on the record the answer to the question the Judge had in mind at the conclusion of the morning session, as to the various items that were brought out and removed. Now you got there on the morning of the 26th, is that right?

A. I don't recall the date, sir.

Q. The fire and explosion was on the 24th?

A. I don't remember the day of the week.

Q. You got there on Tuesday morning, didn't you?

A. Yes.

Q. And the boat was pumped out, I believe you said, on the morning of the next day, Wednesday; is that right?

A. Yes.

Q. And the body was removed about what time on Wednesday; six or seven o'clock or a little later on in the morning?

A. I think it was a little later on in the morning.

Q. Early in the morning anyway?

A. Yes.

Q. And turned over to the undertaker, is that right?

A. Yes.

Q. You brought none of these things up that have been marked in evidence until after the body had been removed, is that right?

A. Yes, sir.

Q. That is correct?

A. Yes.

Q. Yesterday morning you commented on the construction of the gasoline tanks. Do you remember that?

A. Yes, sir.

Q. I take it the same thing is true about that as the other things that were mentioned this morning; that is, if the gasoline tanks leaked they should not have leaked and if they didn't leak they did not have any casual relation with this fire and explosion; is that right?

A. Yes, sir.

Q. Did I understand you to say that from examination there was not any way of inspecting the tanks to tell whether they were leaking?

A. There was no way of inspecting the tanks in the position where they were more likely to leak.

Q. Was there any way of inspecting to see if you could tell whether they were leaking?

A. A man could determine whether the tanks were leaking by looking under the cradle of the tanks, but you couldn't determine where the leak was.

Q. But you could determine whether or not there was a leak?

A. By looking under the cradle of the tanks, yes.

Q. You speak of the cradle of the tanks. Do you mean by that what the tanks rest on?

A. Yes, sir.

Q. What did they rest on?

A. I don't remember the construction of the cradle.

Q. Did you crawl under the tanks?

A. No, sir.

Q. Do you remember a means of going from the engineroom into the forward compartment of the engineroom?

A. As far as I remember now there was a passageway on the starboard side of the vessel. My memory is refreshed by the blueprint you showed me yesterday.

Q. The blueprint that Mr. Matteson showed you yesterday?

A. Yes, sir.

Q. Do you remember any manhole in the engineroom by which you could get forward of the engineroom?

A. There was a plate attachment in the forward engineroom bulkhead that apparently had been used in installing the tanks.

Q. Did you see the plate; was the manhole plate on the manhole?

A. As far as I remember it was in place, a removable plate.

Q. You say you removed it?

A. No, I said it was a removable plate.

Q. Did you go into the space that gave access to?

A. No, sir.

Q. Do you know whether there were any drain pans under those tanks or not?

A. I don't remember them.

Q. You were not looking to be sure whether there were or not?

A. I wouldn't say for sure.

Q. Might have been and might not have been?

A. That's right.

Q. Now what do you know about the waterline of that vessel, where it was with respect to anything in the engineroom?

A. As far as I remember the waterline was something less than a foot above the bottom of the tanks.

Q. How did you determine that?

A. I determined that by placing a stick on the outside of the vessel, measuring the distance from the gunwale to the water after the vessel was brought afloat, and again placing the stick on the inside of the vessel from the gunwale down?

Q. Did you do that before the body was removed or after?

A. There was nothing whatever done as to removing fittings or determining anything whatsoever until the body was removed.

Q. So that you did that between the time the body was removed that Wednesday morning and noon of the following day; or the day you left the boat?

A. Yes sir.

Q. Did you say there was less than a foot's difference between the bottom of the tank and the waterline?

A. About that.

Q. How many inches would you say; can you recall that?

A. I recall between eight and ten inches.

Q. You didn't mention that in your report?

A. No, I didn't consider it very important.

Q. Do you know what kind of batteries the Seminole had?

A. No, sir.

Q. I think you testified yesterday that in preparing a vessel to be laid up the batteries should be removed, is that right?

A. Yes.

Q. What is the reason for that?

A. To rid the boat of all fire hazards.

Q. Wherein lies the fire hazard in batteries?

A. Dropping a steel object on the battery would cause a spark.

Q. Is that the only reason—

A. If the batteries are hooked up to the system of the vessel there is a great fire hazard in leaky cables and moving switches that should not be moved—

Q. I take it you simply mean that a vessel without electric power aboard is less likely to have a spark than one that has?

A. Yes, sir.

Q. Does it make any difference what kind of batteries they are as to whether they should be removed or not?

A. I consider both dry and wet cell batteries fire hazards when a boat is laid up.

Q. Both of them, dry cell and wet cell too?

A. Yes, sir.

Q. You said something yesterday about it taking a crew of three men two days to lay up such a boat as the Seminole; do you remember that?

A. Approximately, yes.

Q. Of course a great deal would depend on how much work they had to do to get the bilges clean?

A. Exactly.

Q. If the bilges were clean it would not take that much time, would it?

A. No.

Q. What is your testimony as to these cowl ventilators; where do they lead and what space do they ventilate?

A. They ventilated the engineroom as far as I could determine.

Q. You said something to the effect that there was no indication that the ventilators extended below the deck. What did you mean by that? Where did they lead?

A. The only way I can answer that question is to explain what proper ventilators are.

Q. I am interested in your recollection as to what you saw as to the construction of these ventilators; where did they lead?

A. To the engineroom.

Q. Did they lead to anything below the deckhead of the engineroom?

A. There was no indication of it.

Q. How long has it been since you left Miami as a resident?

A. July 18, 1935, two and a half years ago.

Q. You have not lived here since that time?

A. Not permanently.

Q. Have you been in Kentucky all of that time?

A. Not all of that time; I have been here twice since.

Q. Has Kentucky been your residence since that time?

A. Yes, sir.

Q. You have not gone home to Denmark?

A. No, sir.

Q. Did Lowney go to Kentucky with you?

A. No.

Q. When did he go up there?

A. The first time I saw him after I left here was two months ago when he came to my residence in Kentucky.

Q. Since that time has he worked for you there?

A. No.

Q. For whom did he work?

A. Up there?

Q. Yes.

A. The only time he worked was four hours, assisting me in raising a pump—

Q. Did he work for anybody else while he was there?

A. Not that I know of.

Q. Where is his permanent home, do you know?

A. I am sure he has none.

Q. Does he have a wife?

A. Yes.

Q. Where does she live?

A. She travels with him. She was with him there.

Q. What was his address when he lived in Miami?

A. That I don't know.

Q. Do you have any record of that?

A. No, I have no record of it; he didn't work for me for sometime before he left here.

Mr. Underwood:

Will you mark this Exhibit 2 for Identification?

Q. Mr. Holm, I show you Respondents' Exhibit 2 for Identification, a piece of paper—two pieces of paper—does the second one bear your signature?

A. Yes, sir.

Q. Look at it and tell me whether that is a copy of your report or not?

A. Shall I take time to read it?

Q. Look at it as long as it may be necessary for you to answer my question?

A. Yes, I would say that this is a copy of my report.

Q. It is a carbon copy, isn't it?

A. It is a carbon copy, yes, sir.

Mr. Matteson:

May I see the document just identified?

Mr. Underwood:

I haven't offered it yet.

Mr. Matteson:

I think if the witness identified it we are entitled to see it.

Mr. Underwood:

You may see it. (Hands document to counsel.)

Mr. Matteson:

You do not suggest that there is any difference between this one and the one we had here yesterday, do you?

Mr. Underwood:

I do not know. I haven't read the other one, nor have I seen it. That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. At the time that you prepared this report, of which you have identified two copies, did you have your notes which have been referred to in cross examination?

A. Yes, sir.

Q. Is there any difference in your report and the notes that you had?

Mr. Underwood:

I object to that; not the best evidence.

The Commissioner:

Note the objection.

A. Is there any differences?

Q. Any differences between your notes and the reports?

A. The report is a summary of the notes, sir.

Q. You spoke of lending a copy of your report to Mr. Batchelor; was that returned to you, or do you remember?

A. Yes, it was returned.

Q. You were asked a number of questions about vessels that you had designed or constructed and you gave them the names and descriptions of a number of them. Does that include all of the vessels that you owned or operated or worked on?

A. No, not by any means.

Q. Now in the course of your cross examination you were asked about conversations with Mr. Riley, and you were asked if the conversation which was referred to was the only conversation you had with Mr. Riley. At first you said it was and then you corrected that and said there was another one. Will you tell us about the other conversation with Mr. Riley?

A. Mr. Riley presented me with a check for fifty dollars; whether it was by check or in cash I don't remember, but I believe it was a check for fifty dollars, and expressed his appreciation for the assistance that we rendered in removing and searching for the body, and Mr. Riley read the report.

Q. Was that the time you gave him the report or was it at some other time?

A. Whether it was on the second or third conversation I am not able to say, sir, but it wasn't in the first conversation.

Q. Was there a conversation in which Mr. Riley asked you to prepare such a report?

Mr. Underwood:

• Objected to on the ground that it is leading.

A. Yes, there was a conversation in which Mr. Riley asked me to prepare a report.

Q. In which conversation was that, do you recall?

A. The first one as I remember it.

Q. Was the report delivered to Mr. Riley in person or not?

A. Yes, sir.

Q. Was that the second conversation, or do you recall?

A. It wasn't the first conversation; there may have been a conversation in between the first conversation and the conversation in which the report was discussed.

Q. Was there a discussion of the report?

A. There was no discussion of the report; there was a remark, as far as I remember, by Mr. Riley that the report was not favorable "to us".

Q. Now about this gasoline that you found springing up in the hull of the vessel, as you described it, while she was being pumped out—something was said about 25 gallons being a large amount. In your judgment would be 25 gallons cover the amount that did come out in the engineroom at that time, or what is your judgment about that, inaccurate as it is bound to be?

A. I don't think that 25 gallons would cover the amount that came out in the engineroom during the process of raising the vessel, but the estimate is approximate.

Q. What is your estimate; that is what I am trying to get at?

A. In other words, I think that it could have been a few gallons more than 25 that came in the engineroom from the tanks. I believe that the exact amount could be determined by measuring the cubic content from the valve in the tanks to the bottom of the tanks. It is bound to be the correct amount of gasoline due to the fact that after the explosion occurred it opened the gas

cocks and the gas drainage valves into the tanks, and the gasoline that was left in the tanks above the valves would escape and naturally be replaced by water, and during the process of raising the boat that amount of gas being up further in the body of the tank would escape from the valves or other connections when the water got low enough in the tanks for the body of the gasoline to escape.

Q. Does gasoline float on water?

A. Yes, sir.

Q. Let me see if I understand you: If the gasoline line was ruptured by the explosion the gasoline would immediately flow out down to the level of the outlets, is that right?

A. Exactly.

Q. If there—

Mr. Underwood:

I object to the leading question, and on the further ground that there has been no proof that there was any gasoline in the tanks.

Q. If there were any gasoline?

A. If there was any gasoline in the tanks that is what would happen.

Q. Then when the vessel filled with water through leaks what would happen in the tanks?

A. The body of the gasoline would rise in the tanks on top of the body of the water.

Q. On top of the water that entered the tanks?

A. Yes, sir.

Q. When the vessel was pumped out what would happen?

A. The water would drain out of the open connections and the gasoline would gradually reach the open connections and escape and water would be contained from the valves down to the bottom of the tank.

Q. So that the amount that would escape in that manner would be the amount left in the tanks below the outlet level?

A. Exactly.

Q. And that would be capable of measurement?

A. Yes, sir.

Q. Now you spoke of a switch being in an arcing position. Will you tell us what you mean by that?

A. The switch is in an arcing position at the time the knives reach the point that an electric spark is formed between the two poles of the switch.

Q. That is, a spark jumps across before the contact is actually made?

A. Yes.

Mr. Underwood:

Don't lead the witness, please.

Q. Does that occur when there is an actual contact between the proper connections?

Mr. Underwood:

Objected to as leading.

A. A spark will not occur without there is actual contact between the two poles but it will occur before and after the contact with the knife-switch.

Q. What causes that?

A. The proximity of two bodies containing different polarities.

Q. Is that or is that not a characteristic of knife-switches?

A. That is a characteristic of knife-switches but the spark is not dangerous at any time in enclosed knife-switches.

Q. Just tell me what you mean between an open and enclosed switch?

A. An open knife-switch is without any covering whatsoever and is in my opinion a dangerous object in an engineroom, which is apt to be full of fumes at times and any movement of the switch might ignite the fumes in the engineroom.

Q. How does the enclosed switch differ?

A. It is entirely enclosed in a metal box that does not allow the fumes to enter.

Q. So the tendency of electric knife-switches to arc is a generally known and recognized fact, or not?

A. It is a generally known fact.

Q. I would like to be a little more clear than we have been on the extent in which or to which the Seminole was sunk. Can you tell us as well as you can how close up to the gunwales of her deck the water came when she was lying sunk there before you started to pump?

A. As far as I remember the after gunwale was just awash.

Q. Would any water enter the vessel in that condition except through holes or openings in her side?

A. Not very much, because we only had a four-inch suction as I remember inside the vessel in order to raise it and if any great amount had been flowing in there through the gunwales or through any openings near the surface of the water at the time the ship was sunk we would not have been able to raise it with as small a pump as we had.

Q. Describe this pumping operation again so that we will be able to understand that.

A. A section of a centrifugal pump was inserted into the deepest part of the vessel—what part I don't know—and as far as I know it was removed several times in order to find the deepest part of the vessel to remove the most possible amount of water.

Q. And where was the pump placed?

A. The pump was placed on the dock.

Q. What kind of a pump was it?

A. Gasoline driven centrifugal pump.

Q. In the course of your testimony you spoke of the gasoline tanks of the Seminole being intact after the accident. Will you explain to us just what you mean by that?

A. By intact I mean the same condition as they were in before the destruction of the vessel.

Q. No evident damage?

A. No evident damage to the tank itself.

Q. Does that mean that they were all in place?

A. No, sir; number 2 tank was distorted from its original position.

Q. By "distorted" you mean out of position?

A. Yes, sir.

Q. The tank itself was not distorted?

A. No, the position of the tank was distorted.

Q. There was one other thing I was going to ask you about these tanks and these connections: The way these tanks were installed and the connections laid out, would there be any strain on those connections in the operation of the vessel?

Mr. Underwood:

I object to that on the ground that the witness is not qualified by observation or experience.

A. Yes, the gasoline fittings could be strained to a great extent, either through motion of the vessel on the seaway or through the grounding of the vessel.

Q. How would the motion of the vessel and the seaway affect it?

Mr. Underwood:

Same objection:

A. The stability of a body of any kind is lowered in a seaway and might create a distortion of the tanks.

Q. Was there anything to keep the tanks rigidly in position?

Mr. Underwood:

Same objection.

A. As well as I remember the tanks were not fastened in the vessel in any way whatsoever.

Q. If the vessel were in a seaway and there was motion of the vessel what would the result of that be on the tanks?

Mr. Underwood:

I object to that as being a hypothetical question and not all facts given.

A. The result would be distortion of the position of the tanks and the straining of all fittings.

Q. You spoke of a removable plate on the forward end of the engineroom bulkhead. Does that appear on this Exhibit number 9; if so, state it.

A. Yes, sir (indicating on photograph).

Q. You are showing us the edge of a plate which appears to be loose from the plate adjacent to it

A. Yes, sir.

Q. I will draw a line here and say "edge of plate".

A. That is right.

Q. How was that plate held in place; does it show there?

A. Yes, this picture shows some of the bolt heads.

Q. Will you point to one of them?

A. There is one and here is another one (indicating).

Q. There appears to be an opening at the bottom of this plate here; do you recall that?

A. Yes, sir.

Q. What is that?

A. I don't know.

Q. Does that lead to the space under the tanks?

A. It leads to the tank compartment, yes.

Q. Can you by comparison with anything else in the photograph say whether that is under the tanks or not?

A. Yes, that is under the tanks.

Q. What did you compare it with?

A. I judged from the relative position of the bottom of the tank; it is very plainly shown on the photograph.

Q. Under number 1?

A. Yes, number 1.

Q. Then that tank that is referred to, which I will mark with the letter "A", leads to the space under the tanks, is that right?

A. Yes, sir.

Q. Now suppose that removable plate were removed, how much access would that give you to the tanks in the tank compartment?

A. Judging from the size of the other objects in the picture I would say approximately 18" square.

Q. That would give you access to that part of the tanks lying immediately beyond the plate, would it not?

A. Yes, sir.

Q. Would that give you access to those parts of the tanks on either side of the opening made when the plate was removed?

A. No, sir; it would not.

Q. Do you know whether there were any plates under any of the tanks?

A. No, I don't know; I didn't inspect the compartment below the tanks.

Q. If there were no plates under any of the tanks, how would that affect the possibility of inspection on the bottom?

Mr. Underwood:

Objected to as speculative.

A. It would prevent it.

Q. Now in a discussion of the ventilators you were attempting to describe this installation by telling us what the proper installation would be. Will you tell us what the proper installation of ventilators of this type—this type of vessel—would be?

Mr. Underwood:

Objected to because he is not qualified.

A. In my opinion the proper installation of ventilators for an engineroom would be to have the lower part of the ventilators leading to a point of approximately 18 inches to two feet above the floor of the engineroom.

Q. Why is that?

A. To absorb all of the gasoline fumes from the bilges.

Q. Can you tell us whether gasoline fumes are lighter or heavier than air?

A. Gasoline fumes of no disturbance are heavier than air but atomized gas is lighter than air.

Q. Where in an enclosed compartment do the gasoline fumes tend to accumulate?

A. Near the floor.

Q. Then if the ventilators were not carried below the deck would they or would they not be adequate to prevent gasoline fumes remaining in an enclosed compartment?

Mr. Underwood:

Objected to on the ground that the witness is not qualified; on the further ground that it is hypothetical and all the facts are not given.

A. Would not be adequate in my opinion.

Q. Would not?

A. No, sir.

Re-Cross Examination.

By Mr. Underwood:

Q. I am not sure whether I understood what you said to Mr. Matteson about the effect of the explosion on the tank valves. Did you tell him that an explosion would have any effect on the tank valves?

A. No, I don't think so.

Q. In reply to one of Mr. Matteson's questions you did say that if the gasoline line were ruptured the gas in the tanks would flow out, is that what you said?

A. Yes.

Q. Of course that depends upon whether or not the valves are open, doesn't it?

A. The gasoline would not flow out if the tank valves were not open.

Q. As I understand the effect of your testimony now about the springs of gasoline, or whatever it was you saw, you are telling us that the amount of gasoline you saw was the same as that which would be in those tanks below the valve level and between that level and the bottom of the tanks, is that right?

A. That is right.

Q. You are telling us that that is as nearly as you can estimate the amount of gasoline that you saw?

A. Yes.

Q. You don't say that you saw any more than that?

A. Not coming out of the tanks and the connections, no.

Q. Or springing up through the water?

A. No, sir.

Q. Now you have spoken about a switch being in an arcing position. I don't suppose you know whether there

was any current in that switch or on that switch at any time, do you?

A. I have no way of knowing that.

Q. Is it your testimony that a knife-switch will arc, or spark, as you close it?

A. Not as much as when you open the switch.

Q. Is it your testimony that it will arc or spark when you close it?

A. Yes, sir.

Q. I assume that it does not arc at that stage as much as when you open it?

A. That is correct.

Q. Isn't it a fact, Mr. Holm, that there is substantially no arc when you close a knife-switch, and that the only arc you receive is when you open it?

A. No.

Q. You don't know that?

A. No, that is not a substantial fact, sir.

Q. Is it your testimony that knife-switches, enclosed and not enclosed, are improper on vessels like the Seminole?

A. Yes, sir; in an engineroom.

Q. That is your testimony?

A. Yes, sir.

Q. How many vessels can you name that have enclosed knife-switches in the engineroom and not exposed knife-switches in their engineroom?

A. Any amount of them.

Q. Just give us a list of all you can name and tell us what type of boat they are on.

A. It will be from memory.

Q. All right.

A. The Poule de Eau, hailing from City Island; the motor vessel Châlena; the Dr. Brinkley--

Q. Dr. Brinkley?

A. Yes; Dr. Brinkley No. 1 and Dr. Brinkley No. 2.

Q. Where are they hailing out of?

A. I think they are hailing out of Houston, Texas. The Vanderbilt—I don't recall the name of that yacht—The Black Eagle.

Q. Where does she hail from?

A. I think she hails out of New York. The Wonder Bird, hailing out of San Francisco; the Espernoza—

Q. Where does she hail from?

A. Tulsa.

Q. Tulsa?

A. Tulsa I believe.

Mr. Matteson:

What Tulsa is that?

A. Oklahoma.

Q. Anymore?

A. The Bolo, hailing out of New York; the Sea Hawk, out of New York; Pieces of Eight, hailing out of Miami. That is all I recall offhand.

Q. What type of vessels are these?

A. Anything from a 50-foot motor "sailer" up to Diesel driven yachts.

Q. How many Diesel driven yachts do you have in that list?

A. One.

Q. The Chalena?

A. Yes, the Chalena.

Q. All the rest are propelled by gasoline motors?

A. The Espernoza has a Diesel engine in her now.

Q. You say you have been aboard all of those others?

A. Yes.

Q. And have seen enclosed switches in the engine-room?

A. Yes, sir.

Q. And they have no open knife-switches in the engineroom?

A. I haven't seen any.

Q. You told me this morning, as I recall it, that when you were diving, before the pumping started, the hull of the Seminole was awash, is that right?

A. Yes, sir.

Q. And the water was up above the level of the engineroom window, is that right?

A. As far as I recall; at any rate, the after gunwale was just awash.

Q. The engineroom of the Seminole was filled as far as it could be filled; was it not—filled up to the level of the windows?

A. I don't remember that the water was level with the bottom of the windows.

Q. You don't recall seeing it that way?

A. No, I don't remember seeing it that way.

Q. You said something about an access of 18 inches when you were looking at this photograph. I didn't understand what you said about that?

A. I said that judging from the size of other objects shown in the picture I would guess that had an opening about 18 inches.

Q. Which opening are you referring to?

A. This one (pointing).

Q. Indicating the opening marked with the arrow and the letter "A"?

A. Exactly.

Mr. Underwood:

That is all.

Re-Re-Direct Examination.

By Mr. Matteson:

Q. Referring to these double valves, Exhibit 11, I think in the course of your testimony you said that they were

turned before you picked them up. What did you mean by that?

A. I meant by that that they were lifted off of their seats.

Q. You mean they were open?

A. They were somewhat open.

Q. Did anyone manipulate them or turn them before you picked them up?

Mr. Underwood:

Let him tell what he saw.

A. I didn't see anyone turn the valves whatsoever before I turned them over to Mr. Miller.

Q. Did your assistant that you spoke of manipulate the valves in any way when he picked them up?

Mr. Underwood:

I object to that; let him say what he saw.

A. I didn't see my assistant move the positions of the handles of the valves at all.

Q. Did you see him pick them up?

A. I saw him pick them up, yes.

Q. When you first picked these valves up, when you tried them to see whether they were open or not, can you tell me how the spindles moved; did they move easily or—

A. They were very, very hard to turn; the reason could be that the packing in the packing nut of the valves was moist at the time, whereas it is dry now, and the valves tend to move easy. I don't think that the position of the valves could be affected in any way by accidentally touching them at that time.

Q. To the best of your observation were they distorted in any way up to the time when you tested them yourself?

A. I didn't see them touched in any way whatsoever.

Q. Were you there?

A. I was there at all times.

Mr. Matteson:

That is all.

Mr. Underwood:

Nothing further at this time.

The Commissioner:

The deposition is closed.

And further deponent saith not.

State of Florida,

County of Dade.

I certify that I recorded the foregoing deposition of Carl Holm, a witness in behalf of the Libelants herein, in shorthand notes at the time and place designated in the caption thereof, and that the foregoing pages, 1 to 142, both inclusive, constitute a true and accurate transcription of said deposition.

In Witness Whereof I have set my hand this 7th day of February, A. D. 1939.

H. E. COLMAN,
Court Reporter.

269

COMPLETE TRANSCRIPT.

In the United States District Court for the Southern District of Florida. In Admiralty, Miami Division.

Charles Coryell, et al., Libelants,

vs.

George J. Pilkington and John S. Phipps, Respondents.

Transcript of proceedings had and testimony taken in the above-entitled cause before the Honorable John W.

Holland, United States District Judge, in the Courtroom of said Court, Miami, Dade County, Florida, commencing at 10:00 A. M., March 15, 1939, pursuant to notice of hearing.

Appearances:

Bigham, Englar, Jones & Houston, of New York City (By Messrs. Jones and Matteson), and Batchelor & Dyer, of Miami, Florida (By Messrs. Batchelor and Dyer), Proctors for Libelants.

Burlingham, Verder, Clark & Hupper, of New York City (By Mr. Eugene Underwood), and Loftin, Stokes & Calkins, of Miami, Florida (By Mr. John P. Stokes), Proctors for Respondent John S. Phipps.

Botts & Field, of Miami, Florida (By Mr. Fred Botts), Proctors for Respondent Geo. J. Pilkington.

Reported by: Colman and Bryant, 941-935 Seybold Bldg., Miami, Florida.

Mr. Matteson:

I think it is agreed between us, subject to your Honor's approval, that it will not be necessary for us to prove either the ownership or the value of any of the boats at the trial, but we will confine ourselves entirely to questions of liability, and if liability is established—

The Court:

Then go into that question.

Mr. Matteson:

That is correct.

Mr. Underwood:

That is correct. Mr. Matteson has informed me of the names of the vessels that were insured, and in exchange for him giving me that information, which I shall offer at the proper time, I have agreed that he need not during the course of this trial prove ownership of the boats damaged or destroyed or the amount of the damage, reserving that for reference later.

Mr. Matteson:

Mr. Underwood did ask me to furnish him certain information with respect to boats that were insured, which were only a small part of the boats involved in this case; I think it was 13 out of some 45; but I furnished it to him with the express reservation that I did not consider it relevant in this case, and reserved my rights with respect to that.

Mr. Underwood:

Quite so.

The Court:

Do you care to make any statement, Mr. Underwood?

Mr. Underwood:

Not at this point, your Honor; thank you.

Mr. Matteson:

If your Honor please, the deposition of the witness Carl Holm taken in January has been filed with the Clerk of the Court. I assume that is in the record now, but I will formally offer it.

The Court:

It has been handed to the Clerk and he announced that he placed his file mark on it. I assume that with

respect to objections to testimony taken before the Commissioner who was appointed that he had no power to rule on the objections noted to the testimony.

Mr. Matteson:

I think that is correct.

The Court:

I think it would be more practical to consider the depositions as having been taken and filed subject to those objections being called up and argued later.

Mr. Underwood:

Yes. Reserving, of course, all the objections that I noted at the time.

The Court:

As to the formalities observed in the taking of the deposition you have no specific objection?

Mr. Underwood:

I have no objection on technical grounds. I have however, further objections to the testimony of this witness which relate entirely to the Seminole, that there has been no foundation laid as yet to show that Mr. J. S. Phipps is in any way responsible for the Seminole. I shall make that objection from time to time during the trial, and I assume you will reserve decision on it as well as on the motion to strike.

The Court:

Yes.

Mr. Matteson:

Perhaps I had better formally note on the record that I do formally offer the deposition of Mr. Carl Holm and

the exhibits in connection therewith as evidence in this case, as Libelants' Exhibit 28.

The Court:

The deposition is considered filed in evidence, subject to the remarks of Court and counsel.

Mr. Matteson:

If your Honor please, there is also a deposition of Mr. E. D. Wright, a marine surveyor, with four exhibits attached thereto, and I would like to offer that in evidence on the same basis as the other deposition.

The Court:

Any objection?

Mr. Underwood:

The same objection as stated.

The Court:

Let the deposition be received in evidence under the same ruling made with respect to the Holm deposition. (Wright deposition marked Libelants' Exhibit 29.)

Mr. Matteson:

If your Honor please, there are two yachts whose names will come into this case from time to time and whose ownership and condition are important. I have here certified copies of the certificates of enrollment of the yacht Seminole for 1923, another in 1924, another in 1929, and also certified copy of the certificate of enrollment and yacht license of the yacht Iolanthe, and I would like to offer these in evidence.

The Court:

What is the connection of the yacht Iolanthe?

Mr. Matteson:

That was another yacht which was admittedly owned by Mr. John S. Phipps, and the gentleman who went down to the Seminole on the day of the explosion and turned the switch which caused the explosion was the registered Master of the Iolanthe and employee of Mr. John S. Phipps.

Mr. Underwood:

If your Honor please, I object to the certificate dated April 18, 1923 and the certificate dated November 5, 1934 on the ground that they are immaterial and too remote in time. This accident happened in 1935, and the nearest in point of time of these certificates is the one dated February 16, 1929, which I believe to have been the current one at the time of the fire, and I have no objection to that one, and I have no objection to the one regarding the Iolanthe. The two earlier ones I have objected to on the ground that they do not prove any fact that was in existence at the time of this fire, and they are too remote.

Mr. Matteson:

If your Honor please, our theory in this case as to the liability of John S. Phipps starts way back when the boat belonged or at least was registered as belonging to Mr. John S. Phipps. Many of the defects in this boat go back to the time when she was converted from steam to gas while in the registered ownership of Mr. John S. Phipps. The whole picture of the thing begins there and works down. It is all a part of our theory of the case, and I think, after the evidence is all in, it will be found to be quite relevant and quite pertinent.

The Court:

There may be a possible relevancy. The objection will be overruled. Let the exhibits be filed in evidence.

(Thereupon Certificate of Enrollment and Yacht License of Seminole dated April 18, 1923, marked Libelants' Exhibit 30; certificate of enrollment, Seminole, dated November 5, 1924, marked Libelants' Exhibit 31; certificate of enrollment, Seminole, dated February 16, 1929, marked Libelants' Exhibit 32; certificate of enrollment, Iolanthe, dated July 7, 1926, marked Libelants' Exhibit No. 33.)

Mr. Matteson:

I guess we are ready to call our first witness, if your Honor please—Mr. John Thomas.

289 Thereupon JOHN THOMAS was produced as a witness in behalf of the Libelants, and having been first duly sworn, was examined and testified as follows, to-wit:

Direct Examination.

By Mr. Matteson:

Q. Mr. Thomas, what is your age?

A. 32.

Q. Your occupation?

A. Boat operator.

Q. Where do you live?

A. West Palm Beach.

Q. Were you on the Yacht Seminole at the time of the explosion on June 24, 1935?

A. I was.

Q. You were badly hurt, weren't you?

A. I was.

Q. You were in the hospital some time?

A. Several months.

Q. Will you tell us, Mr. Thomas, whether any of your expenses were paid by Mr. Phipps in connection with this illness?

A. They were paid by the Palm Beach Company.

Q. Were all of your expenses in connection with your illness and your injuries paid by that company?

A. They were.

Q. Have you made claim against that company for Mr. John S. Phipps for your injuries?

A. I haven't.

Q. Have you been paid by them or anyone anything in addition to your expenses?

A. No; just my expenses.

Q. Have you discussed the facts of this case with the opposing counsel, Mr. Underwood and Mr. Alley?

A. I have.

Q. You are here under subpoena, I believe, to testify?

A. Yes, sir.

Q. Will you tell us, Mr. Thomas, how you came to go on the Seminole on June 24, 1935, and who went with you and what the circumstances were?

A. Well, on a Monday morning Captain Abel came up to my house about nine o'clock, maybe a few minutes before nine, and asked me would I come down to Fort Lauderdale and see about some netting that he wanted made, and I told him that I would.

Q. For what purpose did he want this netting?

A. To go around the stern of another boat, and he wanted me to see this one and to make one like it.

Q. What was the other boat?

Mr. Underwood:

If your Honor please, I object to the conversation between this witness and Captain Abel.

The Court:

Subject to it being connected up so as to be binding upon the Respondent Phipps, the objection is overruled.

Q. What was the other boat?

A. The Iolanthe.

Q. Whose boat was that?

A. I have no idea.

Q. What was the nature of this rope work that was required?

A. It was just a netting to go between the rail and the deck, on the after deck.

Q. What arrangement was made with you with respect to this rope work?

A. I was supposed to do the work for \$25.00. I don't know who Captain Abel made the arrangement with; all I know is that he told me it was all right, that it was satisfactory.

Q. You gave him a price?

A. Yes.

Q. You gave the price to Captain Abel?

A. Yes.

Q. And he consulted with someone else?

A. Yes.

Q. And told you it was all right?

A. Yes.

Q. Now, go ahead from there, please.

A. When we left my house at nine o'clock we drove over to Palm Beach, where he stopped at the Palm Beach Company for approximately one-half an hour; we drove from there to a filling station and he filled his car with gas, and we drove from there down here to Fort Lauderdale. I had lunch over here in Lauderdale, and then went over to the Pilkington Boatyard. I got out of the car; so did Captain Abel. I walked over to where the boats were and he walked over and talked to Mr.

Pilkington; they exchanged a few words, and then we went aboard the Seminole. We first went to the upper deck—

Q. Did you have any words with Mr. Pilkington?

A. No, sir.

Q. You never heard any of the conversation?

A. Never heard a word of the conversation.

Q. All right; go ahead from there.

A. We went to the upper deck of the Seminole. Captain Abel looked around at the small dinghies and boats aboard there and also at the fishing tackle. We spent approximately ten minutes up there, and then we went down to the lower deck and on into the boat. Captain Abel asked me to go down inside with him; he said he wanted to look the boat over.

Q. Did he examine this rope work you went to examine?

A. Just made a mental sketch of it, a notation of it.

Q. Where was that rope work on the Seminole?

A. It was on the after lower deck.

Q. I show you Libelants' exhibit 7. See if you can locate on there approximately where it was?

A. Right here (indicating).

Q. Around the stern on the lower sketch of this blueprint?

A. Yes, sir.

The Court:

Probably you had better put a mark on there.

Q. You can mark on this blueprint with a white pencil. Will you please put a cross-mark approximately where the rope work was?

A. It was right along there (indicating); is that good enough?

Q. Yes.

A. That's where it was.

Mr. Matteson:

He draws a wavy line around the stern. I will put a line at the end.

Mr. Underwood:

That is quite proper.

Q. When was it that you looked at that; was it after you went up on the upper deck or before?

A. After we came down.

Q. How did you go aboard this boat?

A. We climbed over several other boats. There was a walkway or parkway and boats in between, so we just climbed across these other boats and boarded the Seminole.

Q. Where did you go aboard the Seminole?

A. About amidships, if I remember right.

Q. That would be up on the boat deck?

A. Yes; we just climbed right up on the upper deck.

Q. And you went upon the upper deck with Captain Abel?

A. Yes.

Q. Then when you went down to the next deck, how did you go?

A. Down the companionway steps there.

Q. Whereabouts on the vessel?

A. If I remember right they are on the lefthand side of the vessel and lead to the lower deck.

Q. Forward or aft?

A. Aft.

Q. That brought you down on the stern deck where you investigated the network or rope work?

A. Yes.

Q. How long did you remain there?

A. Oh, just a few minutes.

Q. From there where did you go?

A. Went inside the bow; Captain Abel unlocked the door.

Q. That is the stern door of the house on that deck?

A. Yes.

Q. Where did you go from there and what did you do?

A. Captain Abel said he wanted to look inside the boat to see if everything was all right, and he unlocked the door and we started down through the hallway.

Q. That is the crew's quarters in the after part of the ship?

A. Yes, and the galley is located back there, and the ice-box, from what I could see the little short time I was there.

Q. Were you together at this time?

A. He was just ahead of me.

Q. You were following him?

A. Yes.

Q. Then where did you go from there?

A. Well, he looked in the crew's quarters; just made a routine check-up in each galley and places like that, and went from there to the engine room.

Q. How did you get to the engine-room?

A. Through that same hallway or corridor.

Q. This blueprint seems to show a main saloon between the crew's quarters and the engine-room, but it may have been altered; do you know about that?

A. I don't; no, sir.

Q. Did you pass through the main saloon at that time?

A. I don't remember?

Mr. Maiteson:

Is that a fact, Mr. Underwood; do you know whether that main saloon had been altered; have you a plan of the Seminole that we can use which will be more accurate.

Mr. Underwood:

I have a plan of the Seminole which I am advised is reasonably accurate, but unfortunately I cannot vouch

for its complete accuracy in detail; it bears no date or name, and I cannot ascertain when it was made, but, I am advised that it is a substantially accurate plan of the Seminole as she was at that time.

curate?

So there can be no confusion, I think I will have this marked for identification at this moment.

The Court:

Let it be marked for identification.

(Thereupon the sketch or plan of the Seminole above referred to was marked Respondents' Exhibit A for identification.)

Q. Will you look at this plan, Mr. Thomas, and see if that looks more natural to you?

A. We went in this door.

Mr. Underwood:

Indicate that with an "X", please.

Q. Indicates with an "X".

A. Right up this passageway here (indicating); we came down off the upper deck here (indicating).

Q. Indicating the—

A. I don't know if these are the companionway steps or not; we came down here and came right over here (indicating).

Q. Draw a line there.

A. (Draws line on map.) On around here. In the meantime I was standing in this passageway when Captain Abel was looking in these different rooms. We came on around here, up to here, (indicating) and there was a window right here (indicating).

Q. Indicate that with another cross-mark.

A. (Witness so indicates.)

Q. Draw a cross-mark on down where you stopped.

A. Right here is where we stopped (indicating).

Q. Draw a circle there.

A. (Witness so indicates.)

Q. When you got there you stopped, you say?

A. Yes.

Q. Tell us what happened there.

A. Captain Abel said he was going in to check up the engine-room and asked me would I go with him, and I told him no; that I would wait here. Captain Abel crawled through this window. You see, it was a window probably three feet off the ground, off the deck, rather, that he crawled through. If I remember right he opened that window and he went back here to the switchboard.

Mr. Underwood:

Will you indicate his course from the window?

The Witness:

• As near as I can.

(By Mr. Matteson):

Q. Just draw a line there.

A. Captain Abel climbed over some object here; I don't know what it was; and he made his way back this way (indicating), and he went through this way up to here, as near as I can remember.

Mr. Underwood:

Mark a "Y" there.

A. (Witness so indicates.)

(By Mr. Matteson):

Q. Now, what was there in the engineroom at the point?

A. There was a switchboard there.

Q. What happened when he got near there?

A. Well, when Captain Abel got there the only light that I can remember seeing came in through this window.

Q. On the opposite side of the engineroom?

A. Yes, I remember it very well.

Q. Will you mark that "W" for window?

A. (Witness so indicates.)

Q. All right.

A. After he got there the light was kind of dark; it was just semi-dark, you know.

Q. The light was sort of shut off by this—

A. I don't know what shut it off, but it was kind of dark in there, and Captain Abel lit a match here to see the switchboard. Well, he held the match there for several seconds and pushed on either three or five switches; I don't know which, and then he pushed on a main switch, but the match had gone out before that time, but he had seen enough, I imagine, to know what he was doing, and when he pushed in that bottom switch that is when the explosion occurred.

Q. What did you see when he threw in the switch?

A. I saw some sparks.

Q. About the switch?

A. Some inches of the switch.

Q. Just where?

A. I would say to the left of the switch, about eight or ten inches, maybe one foot.

Q. What was there; was there an electric cable there?

A. I don't have the slightest idea.

Q. The spark wasn't at the switch?

A. No, sir.

Q. Now tell us about the explosion.

A. You mean after the explosion?

Q. Tell us what happened then?

A. Well, when Captain Abel pushed the switch the explosion occurred, and all I saw was these sparks and a flash. Well, that is all I remember until I came to sitting on the deck; I came to right here (indicating).

Mr. Underwood:

Suppose you make a "T" at that point.

A. (Witness so indicates.)

(Mr. Matteson):

Q. That was right inside of the window?

A. Yes, on the starboard side of the vessel. I was looking in this window when this explosion happened; I had one arm propped up on the window, looking at Captain Abel. After the explosion I came over here (indicating). I was sitting up beside the vessel like I would be up against this wall, and this wall here (indicating) was thrown over on top of me; it was shattered, and there was a pile of debris there, and I heard Captain Abel about the time that I came to—I heard him yelling for help. I hollered back to him that I would get to him as soon as I could get the stuff off of me. I didn't realize then that I had a broken leg. It took me probably five minutes to free myself of all of this wreckage, and by that time the fire had gained headway and was all around.

(By Mr. Underwood):

Q. Up through the engine-room?

A. As near as I can remember. I was hurt bad. Things were kind of hazy, but it was right along in here—

Q. Draw a wavy line from the after port corner towards the forward starboard corner of the engine room. Now, would you indicate on which side of that line the fire was; please?

A. This side (indicating).

Mr. Underwood:

That is the starboard after side of the white wavy line?

The Witness:

Yes.

(By Mr. Matteson):

Q. Go ahead from there.

A. After I freed myself I realized that I couldn't help him, because I found then that I had a fractured leg.

Q. He was living at that time,—do you know?

A. I never heard him except a couple of seconds after I regained consciousness.

Q. You did hear him then?

A. I heard him then, yes. So I climbed out of this window as best I could, but how I got through I don't remember the full details of it, but I climbed up here; I just barely was able to reach there; I managed to pull myself up and drop down on a barge that was on this side of the vessel; it had some railroad tracks on it. I dropped down on that; it was approximately eight feet to it; it may have been more, but that's about what I remember. I rolled and dragged across it some way and rolled overboard, and if I remember right there was a little neck of land probably fifty feet from there which I swam to, and I stayed there until the heat was so intense I had to move, and I crawled under a little bridge and laid there, covering myself up with mud

as best I could to keep the heat off; finally that caught on fire and I realized that I had to keep moving, so I moved out to a point of land probably one hundred feet from there, more or less, and I stayed there until they found me. From there they took me to the hospital, I am told, and gave me first aid, and I was conscious, fairly well, for approximately one hour after I arrived there; I don't know whether it was one hour or not; it may have been less.

Q. You say you were conscious for one hour. Were you unconscious for some time then?

A. Well, I was full of dope; I don't know what did happen.

Q. Do you remember anything that did happen that night?

A. Very, very little. I would kind of come out of it and then I would go back again.

Q. When you came to the window of the engine-room on the port side was Abel, and Abel opened the window, did you make any observation at that time?

A. Any observation?

Q. Yes; did you notice anything?

A. Nothing out of the ordinary; no, sir.

Q. Did you smell anything at that time?

A. Yes, I smelled a bilgy musty odor.

Q. The engineroom had been closed for quite awhile?

A. I wouldn't know that.

Q. Did it smell as if it had been?

A. Well, the boat smelled just like a boat would in storage closed up.

Q. Why didn't Abel go down through the engine-room hatch, do you know?

A. I do not.

Q. Did he have any keys?

A. Yes, sir; he unlocked the door on the after deck with a key.

Q. Did he have any other keys?

A. Not that I know of.

Q. Did you see him try the hatch through the engine-room?

A. No, sir.

Q. Now I would like to refresh your recollection some if I can, Mr. Thomas; do you know Mr. Botts who is sitting here beside you?

A. Yes; I just met him about thirty minutes go.

Q. Do you remember Mr. Botts and two other gentlemen coming to see you at the hospital in Fort Lauderdale the night of the fire?

A. Yes, I remember they were there.

Q. And they asked you to tell them what happened, didn't they?

A. I really don't know what they asked me.

Q. Don't you remember telling them as best you could under the circumstances what happened at that time?

A. No, sir.

Mr. Underwood:

I object to this line of cross examination on the ground that it is cross examination. I think his questions ought not to be leading and he ought not to impeach his own witness or attempt to.

Mr. Matteson:

I am attempting at this time to refresh his recollection.

The Court:

In the first place, I think the condition in which the witness was at that time is very strongly against it being competent, and then if it was you would have to ask him the question: Did Mr. Botts say to you a certain thing, repeating what he said, and did you answer so and so?

Mr. Matteson:

That is exactly what I am coming to.

The Court:

Use the words: Did Mr. Botts say so and so, repeating just exactly what was supposed to have been said—

(By Mr. Matteson):

Q. Don't you recollect that Mr. Botts asked you to state at that time what happened and that you at that time said, "Captain Abel crawled through the engine-room window, and I told him I smelled a slight odor of gasoline and for him to be careful". Do you recall making that statement?

A. No, I don't; truthfully I don't.

Q. Was that the fact; is that the fact that you smelled a slight odor of gasoline and told him to be careful?

A. I said that I smelled a bilgy odor; I don't know what I said when I was at the hospital.

Q. What is the difference on a gasoline boat between a bilgy odor and the odor of gasoline?

A. A considerable difference.

Q. On a gasoline boat isn't it a fact that the bilgy odor is very likely to be a mixed odor of water and gasoline?

Mr. Underwood:

If your Honor please, I object on two grounds: In the first place, it is leading; in the second place, it is speculative; furthermore, I object on the ground that this is Mr. Matteson's witness.

The Court:

Do you claim that you are examining an unfriendly witness?

Mr. Matteson:

I do, sir.

May I say that there has been no sign of unfriendliness as yet.

The Court:

I will sustain the objection.

(By Mr. Matteson):

Q. One thing more, Captain Thomas: isn't it a fact that you said to Mr. Botts at that time: "Captain Abel then threw on a knife switch to turn on the lights; I saw the switch arc and there was an immediate explosion"?

A. I don't remember.

Q. Is that a correct statement of what happened?

A. Captain Abel threw the switch and the explosion occurred immediately after that.

Q. You saw the switch arc, did you not?

A. No, sir; I did not see the switch arc.

Q. Well, that is what I asked you: I asked you whether this was a correct statement: "Captain Abel then threw on a knife switch to turn on the light; I saw the switch arc and there was an immediate explosion"?

The Court:

He has answered that, that he did not remember. You are asking him as to a conversation between him and Mr. Botts, and he said he didn't remember. Then you came back and referred to the hospital conversation and asked him as a matter of fact was that a correct statement.

Mr. Matteson:

That is right; that is what I am asking him now.

The Witness:

When Captain Abel pushed the switch the sparks, or whatever it was, occurred at one side of the switch and the explosion was immediately afterwards.

(By Mr. Matteson):

Q. Did the switch arc?

A. I didn't see the switch arc; no, sir.

Q. You didn't?

A. No.

Mr. Matteson:

Captain Patten, will you stand up?

(By Mr. Matteson):

Q. Do you know Captain Patten?

A. Yes, I do.

Q. Do you remember that Captain Patten was one of the men who came to see you at the hospital that night?

A. I remember that he came to see me at the Palm Beach hospital.

Q. Do you remember that he was there at Fort Lauderdale hospital that night?

A. I heard that he was there, but exactly who was there I haven't any idea; if I had to identify them I couldn't do it.

Q. Do you recall that you stated to Captain Patten at that time: "Captain Abel crawled through the engine-room window and I told him I smelled a slight odor of gasoline and for him to be careful"?

Mr. Underwood:

If your Honor please, that is the same thing, and I renew my objection, and on the additional ground that it has been covered and disposed of.

The Court:

Have you specified the time and the place of the alleged conversation with Captain Patten?

Mr. Matteson:

At the hospital at Fort Lauderdale on the night of the fire.

The Court:

The objection is overruled. Now you may answer the question.

Q. Do you recall making that statement at that time?

A. No, sir.

Q. Did you make that statement?

A. I don't remember.

Q. You know, I believe, the county attorney of Fort Lauderdale, Mr. Miller, Mr. Garry Miller?

A. No, I don't.

Q. Do you recall that he was one of the three men who visited you in the hospital at Fort Lauderdale that night?

A. No, I don't; no, sir.

Q. Did you make this statement to Mr. Miller: "Captain Abel went down toward the engineroom to inspect the boat; I could smell a slight odor of gasoline and warned Captain Abel to be very careful as one always has to be very careful on a boat which is laid up"?

A. I don't remember.

Q. Is that a correct statement?

A. Well, when we were walking down the corridor I did make the statement to Abel to be careful and not light any matches for cigarettes, is what I had in mind.

Q. Why was that?

A. Well, the boat had been closed up and it is not safe to light matches on a boat.

Q. That has been closed up?

A. Well, it has always been my opinion that it wasn't.

Q. Why is that?

A. Well, they don't get the proper ventilation if they have been closed up a considerable length of time.

Q. Does the fact that they are gasoline boats have anything to do with it?

A. On any boats.

Q. Is that any more important in a gasoline boat than any other boat?

A. I would say it would be; of course any boat should be aired out, though; I don't know that that one wasn't.

Q. Did you make this statement to Miller: "When the explosion happened I was looking at Captain Abel through the engine-room window and in order to get lights Captain Abel threw the knife switch located in the engine-room; when he threw the switch the switch arced and there was an immediate explosion"?

The Court:

Is that the same time and place?

The Witness:

At the hospital?

(By Mr. Matteson):

Q. At the hospital.

A. I don't remember what I said at the hospital.

Q. Is that a correct statement?

A. No; the arcing was eight or ten inches to one side of the switch, a little more or a little less; I really don't know.

Q. Now you remember being interviewed at the hospital by reporters while you were recovering from this accident, newspaper reporters?

A. At the Fort Lauderdale Hospital?

Q. Yes.

A. No, I don't remember seeing a reporter there.

Q. In the Daily Tribune of Miami Beach, Florida, Tuesday, June 25, 1935, a signed article by Ben Gaines, Tribune Staff Correspondent, the following statement appears—

Mr. Underwood:

I object to the reading of any statement from a newspaper.

Mr. Matteson:

This is a statement attributed to the witness and I want to know if he made it.

Mr. Underwood:

May I suggest that it might be more proper to mark this paper and let the witness read it, rather than get this into the record in this backhanded way?

Mr. Matteson:

It doesn't make any difference to me, but I don't think it is—

The Court:

Can you indicate that portion you wish to call his attention to and let him read it?

Mr. Matteson:

Yes.

• (Thereupon the newspaper article was marked Libelants' Exhibit 34 for identification.)

(By Mr. Matteson):

Q. I will ask you to read this paragraph which begins on the first page and goes over to the back page, which attributes that statement to you.

The Court:

Read it out.

A. "Thomas, who is at the Memorial Hospital, said he smelled a strong gasoline odor from the open engine-room hatch. He warned Abel not to strike a match. Apparently not heeding the warning, Abel turned on the light switch which arced and ignited the gasoline fumes. The explosion followed, igniting the boat. From the Seminole the blaze spread throughout the entire basin, which is approximately eight hundred feet long and more than 200 feet wide."

Q. Did you make that statement to the reporter?

A. I didn't; I don't remember it if I did.

Mr. Underwood:

May we have the time and place of this alleged conversation fixed?

Mr. Matteson:

Of course, I do not know the time and place of the exact conversation, but it must have been—

Mr. Underwood:

Not what it must have been.

Mr. Matteson:

I think it is very obvious. This is an issue of the Daily Tribune, Tuesday, June 25, 1935, which is the day after the fire.

Mr. Underwood:

Is that a morning paper?

Mr. Matteson:

Yes, it was a morning paper.

The Court:

Will you revise your question as to time and place, and ask him did he make such a statement as that to a reporter of the Tribune between the time of the conflagration and the date of the newspaper publication?

Mr. Matteson:

Yes, your Honor.

(By Mr. Matteson):

Q. Did you make that statement to a reporter for the Tribune or to anybody between the time of the fire and the time of the issuing of this paper the next morning after the fire?

A. I don't remember talking to any reporter.

Q. Now, here is another clipping from the Daily News Bureau, Fort Lauderdale, July 11th, which reports recovery of your health. I will ask you to read the final paragraph beginning there with "Thomas went"—

Mr. Matteson:

First, mark this for identification.

(Thereupon the newspaper article above referred to was marked Libelants' Exhibit 35 for identification.)

(Thereupon the witness read Exhibit 35 for identification into the record.)

(By Mr. Matteson):

Q. Did you make that statement to a reporter or to anyone else between the time of the fire and the date of this article, July 11, 1935?

A. No, sir.

The Court:

There has been no objection to that, but if the witness who sponsored that article in the Fort Lauderdale paper is introduced seeking to impeach this testimony I have this present attitude toward his testimony: There is a great deal of uncertainty as to whether that reporter is purporting to state in that article what Mr. Thomas stated in a recent interview, at the time of the writing of the article, or whether he has refreshed his recollection of the entire transaction and going back to the writing of what he understood was in the papers and so forth at the time.

Mr. Matteson:

I think that is correct, if your Honor please. It is not clear from the article, and I made the question broad enough to cover the entire time between the date of the fire and this date.

(By Mr. Matteson):

Q. Do you know Bill McCoy?

A. Yes, I do.

Q. Do you know Ben McCoy?

A. Yes.

Q. Do you recall that they came to visit you in the hospital on July 13, 1935?

A. I recall that they came to visit me but at what date I don't remember.

Q. Do you remember that Bill gave you a copy of his book "The Real McCoy"?

A. I do.

Q. Do you recall saying to Bill and Ben McCoy on that occasion of their visit: "Him (referring to Abel) and I met at the engine-room window and he crawled through. I said don't strike a match as I smell gasoline. From where I stood I could see Abel at the switchboard and also a view of the switchboard. Abel was there for about half a minute and then we saw the glow like a short circuit on the switchboard and then a blue flame". Do you recall making that statement to Bill and Ben McCoy on July 13, 1935?

A. No, I don't recall making that statement to Bill and Ben McCoy.

Q. Is that statement a correct statement?

A. Repeat it again, please.

(Thereupon the preceding question was repeated as above recorded.)

A. Abel and I walked to the engine-room together; I didn't meet him there.

Q. When you met him there did you say to him: "Don't strike a match; I smell gasoline"?

A. No, sir; the only thing I said about a match was while walking down the corridor there.

Q. When did the Palm Beach Company start taking care of your expenses; do you recall?

A. No, I don't.

Q. I notice in all of these reports of those various statements from people who say that they talked to you at the time there is no mention of Abel having scratched a match in the engine-room. When did you first recall that, do you recall; who was the first person you told that, do you recall?

A. I think I told everybody about it that I talked to about it.

Q. Do you say you told that to the two McCoys and to Captain Patten and to Mr. Botts and to Mr. Miller or anyone else that you talked to; is that right?

A. I don't remember that I told it to everybody that I talked to.

Q. Do you recall talking on April 6, 1938 to my partner, Mr. Jones?

A. Yes. At the Sailfish Club Dock?

Q. Yes.

A. Yes, I do.

Q. Did you tell him that you smelled a strong odor of gasoline as if there were gas in the bilges?

A. I don't remember if I did or not.

Q. Did you tell him that you warned Abel not to strike a match or make any light?

A. I don't remember.

Q. Do you deny that you made these statements that were attributed to you at the hospital by Mr. Botts, Mr. Patten and Mr. Miller?

A. I don't know what I said at the hospital.

Q. How badly were you hurt at the time, Mr. Thomas?

A. How badly was I hurt?

Q. Yes.

A. Well, I had no idea how badly I was hurt; I was under the influence of narcotics for several months; they didn't let me know how badly I was hurt.

Q. When you were there in the hospital that night did you think you were going to die?

A. Well, I thought my chances were pretty slim to live.

Q. Do you remember my talking with you in your home in West Palm Beach about a year and a half ago?

A. I remember you being there, yes.

Q. Did you tell me anything about Abel striking a match in the engine-room?

A. I don't remember.

- Q. As a matter of fact you didn't, did you?
A. I don't remember.
Q. Who was the first one you told that to?
A. I don't remember that either.
Q. Did you tell that to Mr. Alley?
A. I don't know if I did or not.
Q. Did you tell that to Mr. Underwood?
A. I don't really remember who I told it to.
Q. Do you remember a Mr. Favorite at Palm Beach?
A. Yes, I do.
Q. Did you tell him that the switch arced?
A. No, I don't remember telling him that.
Q. Did you tell him that you smelled gasoline at the engine-room window?
A. I don't remember.

Mr. Matteson:

If your Honor please, it seems to me that we have a very serious and difficult situation here. I have statements from various people that I have mentioned, and I am prepared to put them on the stand to testify to what this man said at the time. These statements were made before this litigation was instituted. Now when we put him on the stand the stories are different. I must say that I am very much perplexed, and the only thing we can do is to leave it as it stands for the time being, because it seems to me that the circumstances are such that I am entitled to regard this witness as a hostile witness and introduce this testimony to impeach him.

The Court:

Well, I can only deal with matters when presented. I see nothing for the Court to rule on at this time.

(By Mr. Matteson):

Q. Do you know anything about Abel looking for some fishing tackle on that boat?

A. Which boat?

Q. On the Seminole the day you were there, the day of the explosion?

A. Yes.

Q. What do you know about that?

A. All I know is that he just went up on the upper deck and looked over the fishing tackle and the dinghies and things that were there.

Q. Did he prepare to take anything away from the Seminole?

A. No, he had not prepared to take anything; he was looking the stuff over.

Q. Just looked it over?

A. Yes.

Q. Did you know that he was there to take some equipment off the Seminole?

A. I didn't know it; he had said something about getting something, but what it was supposed to be, what he was supposed to take, I had no idea.

Q. At the time of the fire he had not gotten it?

A. No, sir.

Q. What were you paid for your work on the Iolanthe? Oh, you didn't do that work, did you?

Mr. Matteson:

That is all I have for the time being.

Cross Examination.

By Mr. Underwood:

Q. Mr. Thomas, this Libelants' Exhibit 85, this little pink clipping from the newspaper says that you were hurried by the explosion about 50 feet across New River into a bed of water hyacinths. Is that a fact?

A. No, sir.

Q. Before you went with Abel to Fort Lauderdale on the 24th of June, 1935, had you talked with anybody but Abel about the work you were to do?

A. No, sir.

Q. You were to make a rope netting of some sort?

A. Correct.

Q. Who was to decide on the length and the dimensions of the netting?

A. I was.

Q. Who was to decide on the mesh?

A. I was.

Q. The size of the mesh?

A. I was; Captain Abel and I.

Q. Was anybody to supervise your work?

A. Not that I know of.

Q. Had anything been said about precisely when you were to do the job, actually do the work?

A. No, sir.

Q. Had anything been said about where you were to do the work?

A. No, sir.

Q. That was to be at your option?

A. What?

Q. The time and the place and the manner of doing that job you were to decide?

A. Yes, sir.

Q. Without supervision?

A. Yes, sir.

Q. I think you have told Mr. Matteson that you did say something to Abel about not striking a match?

A. I did.

Q. Will you please indicate on Respondents' Exhibit "A" for identification as nearly as you can where you and Abel were when you made that remark?

A. It was right along in here, going down this passageway.

Q. Draw a circle with an X in it there. Have you indicated in the vicinity of the passageway?

A. Yes; approximately in here (indicating) some place.

Q. Suppose you indicate as correctly as you can where you were?

A. As best I can remember it was along in here, probably up to here.

Q. You have made a mark indicating the after-limit, and you have made another mark—

A. That is as near as I can remember.

Q. Mark it a little heavier.

A. (So indicates.)

Q. Mark this "M" and this "N".

A. (So marks.)

Q. At that time did you smell any gasoline?

A. I smelled a bilgy odor, a musty odor, a damp odor like.

Q. When you started out from Palm Beach I think you said you went to a filling station and got gasoline?

A. Yes.

Q. Tell us what you saw transpire during the business of Abel buying the gasoline?

A. While he was buying the gasoline?

Q. Yes.

A. He just drove up to the station and told the attendant to fill the car up and he signed a slip of paper for it.

Q. You saw him sign the slip?

A. I saw him sign a paper; I don't know what he was signing because I didn't see it; I couldn't swear what it was because I didn't look at it, but I presume it was for gasoline.

Q. I think you said that when you got to Pilkington's yacht basin you saw Abel converse with Captain Pilkington?

A. Yes.

Q. Did you see anything pass between them?

A. Yes, sir; if I remember right he got some keys.

Q. Do you remember his giving Captain Pilkington anything?

A. I think it was a piece of paper; what was on it I don't know.

Q. You entered the inside of the vessel through the after door?

A. Yes.

Q. Did Abel unlock that door?

A. If I remember right he did.

Q. Did he unlock any other door before he got into the engine-room?

A. Not that I recall.

Q. Do you recall his unlocking anything before he entered from the corridor into the engineroom?

A. No, sir.

Q. Will you stand up and show us how he lit the match as accurately as you can?

A. Well, as near as I recall he held the match just about like this. He struck the match like that and he looked at the switchboard panel, and if I remember right the match went out in his fingers.

Mr. Underwood:

Indicating that he lit the match at the height of his elbows as his arms hang down normally and then raised the match up about the level of his eyes in front of the switchboard.

Mr. Matteson:

That is correct.

(By Mr. Underwood):

Q. How was the weather that day?

A. It was raining.

Q. Raining hard?

A. Well at times, yes.

Q. Had you ever on any previous occasion been employed by anybody in behalf of the Palm Beach Company or any member of the Phipps family?

A. No, sir.

Q. One more thing, Mr. Thomas: Will you tell us, please, the injuries that you sustained at the time so that we will have that in the record?

A. I don't believe I know all I have.

Q. Tell us what you do know.

A. Well, to start off with, a fractured leg which left me permanently crippled; my skull was crushed in back here—

Q. Indicating below and behind the right area. Go ahead.

A. This leg was injured.

Q. The right leg.

A. Slightly mashed and crushed. My hair was burned off, and this eye was severely injured—

Q. Indicating the right eye.

A. My chest was crushed; my scalp was cut open in several places; I don't know the exact number of times; I have had several severe burns on the arms and back, and then I had dozens of little minor injuries, scratches and cuts and bruises.

Q. One more thing, Mr. Thomas: When you arrived at Pilkington's basin on the 24th of June where was Captain Pilkington when Abel handed him this paper and received from him the keys?

A. He was about half-way between where our car was parked and his house, or I presume it was his house, as he came from that direction, and I walked over toward the boat shed.

Q. And you saw a paper passed from Abel to Pilkington?

A. Yes, sir.

Q. And you saw keys pass from Pilkington to Abel?

A. Yes, sir.

Q. Thank you very much; that is all.

By Mr. Botts:

Q. Captain Thomas, do you recall, when you saw this paper pass, whether or not Captain Pilkington had the keys in his hand or whether he went into the house to get them?

A. No, sir, I don't recall.

Q. You don't recall that?

A. No.

Q. In other words, he may have received the paper and gone to the house and got the keys and come back? You are not prepared to say one way or the other on that occasion; is that what I am to understand?

A. I just saw them transacting this business there, passing these objects back and forth.

Q. What I am trying to get at is this: Do you recall whether or not, after Captain Pilkington received the paper, he went to the house and got the keys, or whether he seemed to have had the keys on his person at that time?

A. No, I really don't remember.

Q. In other words, he might have gone to the house and got the keys after he received the paper, but you are not prepared to say about that?

A. I am not positive about it; no, sir.

Q. Now how old are you, Captain?

A. 32.

Q. You had been working on boats most of your life, as I understand it?

A. Yes, sir.

Q. You are familiar with these ordinary knife-switches that you pull and throw with a lever?

A. Yes, sir.

Q. You have seen switches of that character arc or throw sparks when they are opened or closed?

A. I have seen them arc when they are opened but never when closed.

Q. What do you understand by a switch arcing?

A. All I know about a switch arcing is when you pull the switch there is always a sign of a small spark.

Q. And that you know by the term "switch arcing", is that it?

A. Yes; when you pull the switch there is a little spark there when it breaks the contact.

Q. But in describing it, Captain, it means that the switch arced?

A. That is the way I would describe it.

Q. Do I understand you to say that that is what you describe by saying that the switch arced?

A. Yes, sir.

Q. That is what I am trying to get at.

A. Yes sir.

Q. Now I understood you to say that someone has paid all of your hospital bills?

A. That is correct.

Q. Who paid these hospital bills for you, do you know?

A. The Palm Beach Company.

Q. And that company paid all of your doctor bills?

A. Everything; yes, sir.

Q. Now do I understand you to say that you are still suffering from injuries that you received?

A. I am not exactly suffering; I am just crippled up, if you understand what I mean.

Q. I don't mean that you are in pain, but you have not completely recovered from those injuries? Is that what I am given to understand?

A. My leg is stiff; I don't know if you could call it as well as it will ever be or not.

Q. At any rate it is not as well as it would have been but for this accident?

A. No, sir.

Q. That is your left leg?

A. Yes.

Q. You say that it is stiff up in the joint or where?

A. It is stiff right between the hip and the knee—

Q. Between the hip and the thigh joint?

A. Yes, sir.

Q. When did you first learn that someone was going to pay your hospital and doctor bills?

A. I really don't remember.

Q. Do you remember who it was that told you that these bills would be paid?

A. My wife did.

Q. Your wife did?

A. Yes.

Q. Did you ever talk to Mr. Riley about your hospital bills?

A. Yes, sir; if I remember right I did after I was taken to Palm Beach.

Q. What did Mr. Riley tell you about your hospital bills being paid?

Mr. Underwood:

If your Honor please, I object to that on the ground that there is no connection shown between Mr. Riley and the respondent I represent.

Mr. Matteson:

There will be plenty of evidence on that before we get through. I suggest that we take it subject to it being connected up.

The Court:

The objection is overruled, subject to it being connected up.

Q. Answer the question.

A. Nothing more than I would be taken—nothing more than that they would be taken care of.

Q. He said they would be taken care of?

A. Yes, sir.

Q. Did you ever talk to Mr. Alley about your hospital bills?

A. No, sir.

Q. You talked to Mr. Riley?

A. Yes, sir.

Q. Now since this occurrence—I am referring to the fire and accident—have you worked for Mr. Phipps?

A. No, sir.

Q. Have you worked for the Palm Beach Company?

A. No, sir.

Q. Have you worked for any one whom you knew to be connected with Mr. Phipps, Mr. Riley, Mr. Alley, the Palm Beach Company or any one associated or connected with Mr. Phipps?

A. Not to my knowledge; no, sir.

Q. Now did you ever make any requests of the Palm Beach Company or any one else to compensate you in any way for these severe injuries that you suffered?

A. No, I didn't.

Q. You never made any attempt to collect any compensation at all and haven't filed any suit?

A. No, sir.

Q. Have you had any intimation from any one that perhaps, after this litigation, something might be done for you by way of gratuity?

A. Absolutely not.

Q. Not a thing?

A. No, sir.

Q. You just voluntarily, without any compensation other than the payment of your hospital bills, relinquished any possible claim that you may have for compensation, is that right?

A. Yes, sir.

Q. Are you still receiving treatment, hospital and medical treatment, for those injuries?

A. Once in a while I do, yes; no hospital treatment; I got to see a doctor once in a while.

Q. Are the bills paid by you now or are they still paid by the Palm Beach Company?

A. I pay them; just little minor things.

Q. You don't go to the Palm Beach Company and ask them to reimburse you for that?

A. No, sir.

Q. Captain Thomas, have you ever at any time discussed with Mr. Alley or Mr. Riley or Mr. Phipps, or anyone representing those gentlemen or either of them, the cause of this explosion and conflagration?

A. Yes, I have talked with them.

Q. Now then who was the first person, so far as you can recall, with whom you discussed the cause of this accident?

A. I really don't remember.

Q. Well, when was the first time you recall discussing the matter with Mr. Riley?

A. I don't remember; it was several months after the accident.

Q. Now did you ever discuss the casualty or accident with Mr. Alley?

A. Yes, I talked with Mr. Alley.

Q. When was the first time that you discussed the matter with Mr. Alley?

A. Well, probably a little over one year ago, something like that.

Q. Now then you have, of course, discussed the matter with counsel in a way, Mr. Underwood?

A. Yes, I talked with Mr. Underwood.

Q. When was the first time, as near as you can place the date, that you first discussed the matter with Mr. Underwood?

A. Oh, a year ago or so.

Q. Did you discuss the matter with Senator Stokes or any of his associates?

A. Senator Stokes?

Q. Yes.

A. I don't believe I know the gentleman.

Q. The gentleman sitting back of Mr. Underwood?

A. No, sir; I never saw the gentleman before to my knowledge.

Q. So far as you know you have not discussed the matter with any of Mr. Stokes' associates in the practice of law?

A. Not to my knowledge.

Q. Not as far as you know?

A. No, sir.

Q. Now then your recollection is that you think it was perhaps several months subsequent to the accident that you first discussed the cause of the accident with Mr. Riley, is that correct?

A. That is correct.

Q. Now then at that time did you tell Mr. Riley about this match that you have so vividly described; did you mention it to him?

A. I think I did; I am not sure of that.

Q. You are not sure?

A. No, I am not.

Q. Now then let me ask you this: You have discussed this accident with a good many people to whom you did not mention the match, haven't you?

A. I don't remember.

Q. All right, you have said that you recall discussing the matter with the two McCoys, Ben and Bill McCoy. You said you recall discussing it with them, didn't you?

A. I said I remember Mr. McCoy being there; I don't remember what I said to him or anything about it.

Q. You don't remember what you said to him?

A. No, sir; the two McCoy brothers were there; I recall that.

Q. Where?

A. Came to the hospital.

Q. At Palm Beach or—

A. Palm Beach.

Q. When were you moved to the hospital at Palm Beach?

A. I don't remember just especially—just exactly when I was moved there; probably two or three weeks after the accident.

Q. Then how long after you moved to that hospital was it that the McCoy brothers came to talk to you?

A. I don't remember.

Q. Don't remember?

A. No, sir.

Q. Some little time, wasn't it?

A. I really don't remember how long it was.

Q. Then it was several weeks after the accident that you discussed this matter with the McCoy brothers, is that right?

A. It was when I was at the Palm Beach hospital; what time elapsed between that and the time I was there at Ft. Lauderdale I don't remember.

Q. I understood you to say that it was several weeks afterwards that you were moved?

A. All right, sir.

Q. Now then you were fully conscious at that time, weren't you?

A. Yes, part of the time I was. I was still under the—they were still giving me narcotics.

Q. Now then you say, as I understand it, that you don't recall anything that you told the McCoy brothers, is that right?

A. No, sir; all I recall is just general conversation, glad to see me, to see that I was getting along so well, and brought me this book.

Q. That came to see you as friends of yours, did they?

A. They did.

Q. Didn't you describe this accident to them?

A. I don't remember if I described the accident or not.

Q. You don't remember if you described the accident to them; you don't have any recollection about that?

A. No, sir, I don't; I might have; if I did I don't remember it.

Q. Well, do you remember anything that you discussed with them?

A. Yes. They were telling about their boat being burned up, and how they had brought it down a few days ahead of time, a few days before the fire.

Q. Well the subject of the fire came up, didn't it; I mean the fire was discussed at any rate, wasn't it?

A. Yes, sir.

Q. They didn't show any curiosity about how the fire had happened by asking you about it?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. Whatever you told them was true, wasn't it?

A. Well, I would have no reason to lie about it.

Q. Then if you told the McCoy brothers—whose first names I don't recall—at that time that they visited you in the Palm Beach Hospital that you smelled gasoline, that would have been true, wouldn't it?

A. I don't remember what I told them.

Mr. Botts:

That doesn't answer the question. Read him my question. I want him to answer my question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

Mr. Underwood:

I object to that; it is something that may or may not have occurred. The witness has already answered the question. He said, "I don't remember what I said and I had no reason to lie about it".

Mr. Matteson:

He is on cross examination.

(Extended legal argument.)

The Court:

I think the question is hypothetical. I will sustain the objection. Here is the theory of that ruling: You are examining on cross examination an alleged unfriendly witness to the party who introduced him.

Mr. Botts:

Also unfriendly to my client.

The Court:

It is not in the record what the McCoy's would say as to what this witness did say to them.

Mr. Underwood:

I have a statement that I will mark for identification and show to your Honor, and Mr. McCoy will be a witness in the case.

The Court:

I think it is a hypothetical question. The objection is sustained.

We will recess until 1:30.

(Thereupon the Court recessed until 1:30 P. M., March 15, 1939—the same day.)

March 15, 1936, 1:30 o'clock P. M.

Met pursuant to adjournment.

Appearances same as heretofore noted.

333 Thereupon JOHN THOMAS, a witness in behalf of the Libelants, resumed the stand and was examined and testified further as follows:

Cross Examination (Continued.)

By Mr. Botts:

Q. Captain, did you ever talk to the McCoy brothers, or either of them, more than once about this accident?

A. Yes, I have seen them more than once.

Q. Did you ever discuss this accident with them more than once?

A. I don't remember if I discussed it with them at all.

Q. You said that when they came into the hospital the accident was mentioned. Now, Captain, was the accident mentioned between you and Mr. McCoy more than once, whether or not you described it?

A. I don't remember; they were by my house several times, the amount of times I don't know.

Q. Did they come up on a social visit each time?

A. Yes, supposed to be social; I thought it was, at least.

Q. Did the subject of this accident come up at any of these other occasions save and except the one in the hospital?

A. They seemed to be more interested in my condition than anything else.

Q. No, Captain Thomas, you have stated that the subject of this conflagration or occurrence was mentioned and perhaps described with more or less detail between you and the McCoy brothers, with Mr. Jones, with Captain Patten, Mr. Miller and myself on a single occasion, with Mr. Dyer, with Mr. Matteson and with Mr. Favorite, and with some newspaper reporters. Now, Captain Thomas, do you know of other people with whom you have discussed this accident, of course, except Mr. Underwood, the attorney?

A. No, sir.

Q. You do not know of anyone else that you have discussed it with?

A. No, sir.

Q. Other than Mr. Riley?

A. No, sir.

Q. Now then the night when the three men visited you in the hospital that have been referred to as Mr. Patten, Mr. Miller, the county attorney up in Fort Lauderdale, and myself, you were more or less bandaged up on that occasion, weren't you?

A. I don't remember whether I was or not.

Q. I am not trying to trap you, you understand. From what you have said you recall the occasion of this visit but do not recall what was said. Now that is what I understand from what you said. You do recall the occasion of the three men coming to see you don't you?

A. It seems like I have a faint recollection of it; I was told there were three men there; there may have been a dozen for all I know.

Q. Now, Captain, as far as you know you never mentioned the matter of this match being lit to the McCoy brothers, did you?

A. I don't remember what I mentioned to the McCoy brothers.

Q. You don't remember mentioning the match to them; do you?

A. No.

Q. You don't remember mentioning the match to Mr. Jones; you don't remember what took place; you don't remember mentioning the match to Mr. Patten and Mr. Miller and myself, do you?

A. No, sir.

Q. You don't remember mentioning the match to Mr. Dyer, do you?

A. No, sir.

Q. You don't remember mentioning the match to Mr. Matteson, do you?

A. No, sir.

Q. You don't remember mentioning the match to Mr. Favorite, do you?

A. No, sir.

Q. You don't remember mentioning the match to the reporters, do you?

A. No, sir.

Q. Well, then the only other two people that you say you talked the matter over with is Mr. Alley and Mr. Underwood; did you mention the matter to either of those gentlemen?

A. I don't remember whether I did or not.

Q. Then as far as you recollect the first mention of this match was here on the stand this morning, is that what you want me to understand; that this is the first time you recall mentioning the match, Captain Thomas, is that what you want me to understand?

A. No; I just told the story the way it happened.

Q. Wait a minute; that is not what I asked you. You say you have no recollection of mentioning the match to any of these three gentlemen, nor to Mr. Riley, nor to Mr. Underwood, and you have no recollection of mentioning it to them, is that right?

A. Yes, I mentioned the match to Mr. Alley and Mr. Underwood.

Q. I see. Then when did you first mention the match idea to these gentlemen or to either of them?

A. I don't remember the exact time.

Q. Well, when was it when you first mentioned it to Mr. Riley?

A. I don't remember the exact time.

Q. He came down to see you a time or two in Lauderdale, didn't he?

A. He came down but I don't remember speaking with Mr. Riley down there.

Q. He came to see you and talked to you in the hospital at Palm Beach?

A. Yes, he came there several times.

Q. And he discussed the fact that he was going to pay all of your expenses?

A. No, sir; we didn't discuss the fact; he just said that the bills would be taken care of.

Q. Now then was it on this occasion when he told you that the bills would be taken care of—was that when you told him about the lighting of this match?

A. I don't remember if that was the time.

Q. Well, I wish you would make a very strong effort to recall when it was that you thought to mention this match proposition to Mr. Riley which you had not mentioned to any of these other numerous people; try to tell us that if you can.

Mr. Underwood:

I object to that because the witness has not said that he did not mention it to these other people; he said that he doesn't remember whether he did or not. The question is unfair and is not a fair statement of the witness' previous testimony.

The Court:

I think the witness can take care of himself on that subject. The objection is overruled.

A. I don't recall who I mentioned it to first.

Q. And you don't know when?

A. No, truthfully I don't.

Q. Now then you stated that you talked to Mr. Underwood about a year ago.

A. I think it was about a year ago, yes.

Q. It was sometime ago?

A. Yes.

Q. Did you tell Mr. Underwood about it the first time you talked to him?

A. I think I did; I am not sure.

Q. I see. Now then did you give Mr. Underwood a written statement?

A. Not that I remember.

Q. Did you ever sign a written statement with reference to this transaction as far as you can now recall?

A. No, not that I recall.

Q. Now, Captain, my recollection of your testimony this morning is that there were a number of switches on this switchboard and that Captain Abel manipulated the switches in some manner, manipulated a number of these switches, and then he seemed to manipulate some particular switch. I am not sure whether you characterized that switch as a master switch or not, but you said he seemed to manipulate one particular switch and that at the time he manipulated that switch the arcing of this electric spark took place, is that right?

A. That is correct.

Q. Now would you be able to recollect the relative position of the switchboard and these various switches?

A. I think I can describe it pretty close.

Q. All right; I wish you would do so.

A. Well, when Captain Abel lit the match he held it up above his head like this (indicating), and he pushed either three or five switches; not less than three nor more than five up in this corner (indicating) of the switchboard.

Q. That would be the right corner?

A. Yes.

Q. All right; go ahead.

A. Then he pushed in this larger switch and that is when the explosion occurred.

Q. Which was the relative position of this switch which you call the larger switch with respect to the other three or five switches which he had manipulated?

A. It looked to be lower than the other switches, because his hand seemed to be in this position (indicating); in other words, about level with his waist when he pushed it, as nearly as I can remember.

Q. Those other switches that he had manipulated, are you able to say whether he had opened or closed those switches?

A. The way I could see it I think he was closing the switches.

Q. That was your best observation there, that he appeared to be closing them?

A. Yes.

Q. Now then do you know whether or not he manipulated more than one switch down at the lower level—

A. No, I don't.

Q. Those other switches that he manipulated was followed by the arcing of the electric spark and the explosion then took place, is that right?

A. Yes.

Q. That is—

A. When he put the larger switch in that is when this arcing, or whatever it was, took place.

Q. As I recall your testimony you said the spark which was omitted at that time was about level with the hand with which he was manipulating it and somewhat to the left of his hand, is that right?

A. As I recall it that is the way it was, yes.

Q. Now the arcing and the explosion, Captain, one followed the other almost instantaneously, didn't it?

A. Yes.

Q. You were impressed more naturally by the explosion than you were by the arcing, weren't you?

A. After the sparks that is all there was to it.

Q. What I am trying to get at is this: would you be able to say whether or not that spark which was emitted was three inches or six inches or a foot to the left of his hand; would you be able to approximate the distance; would you be able to do that?

A. I would say it was about eight or ten inches, something like that; eight or ten inches, more or less.

Q. In other words, it may have been as little as three inches and it may have been as much as fifteen inches?

A. No, I don't think it was as little as three inches; it looked to be about eight or ten inches, something like that.

The Court:

Was this larger switch opened or closed?

The Witness:

The switch—if I am right—anyway, I saw him close the larger switch.

Q. Now, Captain, you were questioned this morning about whether or not you made a particular statement in this language: "I told him (referring to Captain Abel) that I smelled a slight odor of gasoline". Now you stated, as I recall, that you did not make that statement. Now

then I will ask you this: did you make any statement similar, though not in those exact words, to Captain Abel in which the word "gasoline" was used?

Mr. Underwood:

I object to that, if your Honor please, on the grounds stated to the previous question; it is hypothetical.

Mr. Botts:

I would like to be heard on that, your Honor.

The Court:

I think this is a different proposition. The other question was: If he did state that, was he speaking the truth. I will overrule the objection.

A. No, sir; we didn't mention gasoline, as I remember.

Q. Now then, Captain, I want to be entirely fair with you. Do you mean that you did not mention "gasoline" or that you don't recall it now?

A. I don't remember mentioning gasoline.

Q. If I mentioned it you don't recall it now, is that right?

A. I don't remember mentioning it; no, sir.

Q. Then is it possible that you could have mentioned the word "gasoline" and that you do not now recall it; is that possible?

A. I don't think it would be hardly possible unless I smelled the gasoline or saw it.

Q. Wait a minute. I want to find out how clear your recollection now is; that is what I am trying to get at; I am not trying to trap you. Can you say now positively that you did not mention "gasoline", or is it a fact that your memory is not clear whether you mentioned it or not?

A. I don't remember mentioning it.

Q. Are you positive of that; are you positive of your recollection, or could you be mistaken about it?

A. I don't remember mentioning it. I did mention a bilgy odor and to be careful and "let's not strike any matches".

Q. But you are not positive now whether you may or may not have mentioned gasoline, is that right?

A. I don't remember mentioning it.

Q. I understand that; you have already said that a number of times. I know you have said that a number of times; and we will take that for granted, but I am trying to get at this: is there any doubt now in your mind about it; you are mentally clear as to the correctness of your recollection, or is it possible that your recollection which you now have stated may not be accurate; that is what I am trying to get at, so I will ask you the question again, with that explanation: are you positive now that you did not mention gasoline? You can answer that "yes or not". If you are positive, you can say so; if you are not positive, that is another thing; a man cannot always remember, you know.

A. No.

Q. You mean you are not positive?

A. I mean I am positive?

Q. You are positive that you did not mention gasoline?

A. Yes, sir.

Q. I am referring now to your mentioning of gasoline to Captain Abel there on the Seminole at that time.

A. I understand.

Q. Captain Thomas, you have stated quite positively that you have not received anything by way of money or other benefits from Mr. Phipps or the Palm Beach Company, or from Mr. Riley or Mr. Alley or any of those people associated with Mr. Phipps, save and except your hospital and medical expenses. Am I correct in that matter?

A. Yes.

Q. Now, Captain, I will ask you this question: as I understand it, Captain, you have further stated that you have no understanding, express or implied, that you will at any future time receive any benefits from any of the sources that I have mentioned, on account of the serious injuries which you have sustained. Am I right in that, Captain?

A. That is correct; I have had no understanding whatsoever.

Q. Now then I will ask you this question: has your wife or your uncle—what is his name—

A. Captain L. B. Thomas.

Q. Has your wife or your uncle, Captain L. B. Thomas, or anyone else on your behalf, so far as you know, received any benefit or promise of future benefit from any of those people?

A. No, sir; not to my knowledge.

Q. In asking you this question I want to make a preliminary statement, so that you will not misunderstand me; I am aware of the fact, Captain, that I cannot ask you what might have taken place, but I will ask you if you have consulted any attorney about your rights in that respect?

A. No, sir.

Q. Has your uncle L. B. Thomas with your knowledge or consent consulted anyone?

A. Not with my knowledge; he has not with my knowledge; if he has, I don't know anything about it.

Mr. Botts:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Isn't it a fact that you discussed with Mr. McCoy, either Ben or Bill, the matter of bringing a suit against Mr. Phipps or the Palm Beach Company, or someone, for your injuries?

A. I think we mentioned it, but if I recall right, sir, I was in too bad a condition to even talk about it.

Q. Wasn't that quite a number of months after the accident?

A. I don't remember just how long it was afterwards.

Q. Isn't it a fact that you asked them to write to Messrs. Batchelor & Dyer in Miami and have them send someone up to see you?

A. No, sir.

Q. As a matter of fact didn't an occurrence such as I have suggested take place about June 1, 1936?

A. I don't remember.

Q. Well, I should think you would be able to remember about that, Mr. Thomas. You say you don't remember whether you talked with Mr. McCoy and asked him to arrange for attorneys to come up to see you?

A. I don't recall that I did.

Q. Did you ask Mr. McCoy to have attorneys come up to see you?

A. No, I did not.

Q. Did you at that time or at any time contemplate bringing suit; do you understand that question?

A. I had not contemplated bringing suit at any time.

Q. One thing I do not get clear about your testimony; was there more than one explosion while you were on the Seminole?

A. I don't remember if there was or not. After I was in the water I heard several explosions, and while I was

getting out of the boat I heard several, whether they were on the Seminole or not I really don't know.

Q. As a matter of fact, weren't you blown through the window by the second explosion?

A. No, sir; I climbed through the window.

Q. Could you distinguish spark or arc, or whatever it was, and the explosion; weren't they simultaneously?

A. Yes. I saw those sparks and then it seemed like a ball of fire hit me in the face; it was instantaneous.

Q. Did you smell anything at the window of the engineroom?

A. No, I didn't smell anything out of the ordinary?

Q. Did you smell some bilgy smell?

A. Bilgy smell.

Q. Did you observe anything there about the engine-room that could have caused this explosion unless it was gasoline?

A. Well, I don't know; I didn't notice anything.

Q. As a matter of fact, you have no doubt in your mind that it was a gasoline explosion, do you?

Mr. Underwood:

I object to that, if your Honor please—

The Court:

I will let him answer that. The objection is overruled.

A. Repeat the question again.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. I could not truthfully say what caused the explosion.

Q. Did you smell gasoline after the explosion?

A. No, sir.

Q. Burning gasoline?

A. No.

Q. This force of this explosion blew you from the window against the bulkhead?

A. Yes.

Q. And you found yourself in a sitting position?

A. Sitting position, yes.

Q. Did you ever go back to the window again after that, back to the window to the engineroom?

A. When the explosion occurred it blew all of that over on top of me; it more or less scattered it; I never went that way; I went out of this window right at my back.

Q. You went the quickest way you could?

A. Yes.

Q. How much fire was there in the engine-room at that time?

A. By the time I had gotten out, as I said this morning, it was probably a third filled; it may have been a quarter.

Q. You couldn't see very well where you were, could you?

A. I could see through this same window which had blown over on me, which had blown me against the side of the bulkhead.

Q. Was it blazing in the engineroom at that time?

A. Yes; there was quite a blaze there; there was quite a blaze there when I got out, in fact, when I was going through the window there was fire all around me.

Q. How tall a man was Captain Abel?

A. I would say he was five feet nine.

Q. About your height?

A. No, sir; he is a few inches taller than I am.

Q. Then this switch you said was about the level of his belt, I take it, would be about three feet off the floor of the engineroom?

A. I really don't know.

Q. That would follow, wouldn't it?

Mr. Underwood:

That is speculative; I object to it.

The Court:

I think so. I will sustain the objection.

Q. Now I understood you had a discussion with Abel as you were coming through the passageway, in which discussion you spoke to Abel about the danger of lighting a match, is that right?

A. That is right, sir.

Q. Then you came to the window and Abel went inside and you stayed at the window?

A. I stood on the outside of the window.

Q. You stood there while Abel went to the switchboard and struck the match, is that so?

A. That is right.

Q. Do you want us to understand that you continued to stand at the window of the engineroom after Abel struck the match in the engineroom?

A. Yes, I stood at the window.

Q. Who was Abel working for at that time, do you know?

Mr. Underwood:

I object to that, if your Honor please.

Mr. Matteson:

I asked him if he knew.

Mr. Underwood:

I object to that. I think you should lay the foundation first.

The Court:

I think the question calls for a conclusion. That is a pertinent matter in this inquiry, and I think it ought to

be developed by facts rather than by the conclusion of the witness.

Q. Just go ahead and state what facts you know that bear on Abel's employment at the time he took you down there.

A. Well, I was under the impression that Abel—

Mr. Underwood:

I object to that.

The Court:

Just tell what you know.

Mr. Underwood:

May the witness be instructed not to say what people told him, but state what he observed.

The Court:

You are being asked now about Captain Abel's employment, and you are instructed not to base your answer on anything that Captain Abel told you.

The Witness:

All right, sir.

The Court:

But state any facts you know in connection with his then employment.

The Witness:

Well, I thought—

Mr. Underwood:

I object to what he thought.

The Witness:

That is all I know.

The Court:

What do you base your thought on?

The Witness:

From the boat that he was running; from the boat that I would see him on.

(By Mr. Matteson):

Q. What boat was that?

A. It was a little boat called the Clip.

Q. Clip?

The Reporter:

How do you spell it?

The Witness:

I don't know how you would spell the name.

Mr. Underwood:

C-l-i-p.

Q. What sort of a boat was the Clip?

A. A small fishing boat; probably thirty-two feet in length.

Q. But the work he consulted you about was work in reference to the Iolanthe, wasn't it?

A. Correct.

Q. Can you tell us whether Captain Abel at times worked on the Iolanthe?

A. Yes, he did.

Q. Was he the Master of that boat, do you know?

A. I don't know whether he was the Captain or not.

Q. Have you ever discussed your claim with Mr. Phipps?

A. No, sir.

Q. Do you remember telling Mr. Favorite and Mr. McCoy that you were going to see Phipps with your lawyer about your claim, about March 11, 1937?

A. No, I don't.

Q. Did you tell him that?

A. No, I didn't.

Q. Did you tell him a few days later that everything was all right?

A. Did I tell who a few days later?

Q. McCoy?

A. No, sir.

Q. Or Favorite?

A. I didn't tell either one of them.

Mr. Matteson:

That is all.

Mr. Botts:

There are a couple more questions. I would like to ask.

Mr. Underwood:

Go ahead.

By Mr. Botts:

Q. My recollection is that you stated that when you were walking down this passageway, going forward from the stern of the boat toward the engineroom, that you told Captain Abel to be sure not to light a match, or words to that effect.

A. Yes.

Q. You saw him go into this engineroom, didn't you?

A. Yes, sir.

Q. You knew that that was enclosed, where if there was any dangerous gases it would be in an enclosed place, didn't you?

A. Yes.

Q. And when you saw him about to strike the match in there did you protest?

A. I didn't know he was going to strike a match until it was lit.

Q. When you saw him with the lighted match in his hand did you protest or cry out?

A. Nothing happened; I didn't say anything.

Mr. Botts:

That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. You spoke, Mr. Thomas, of the explosion as a ball of fire. Did you hear any explosion?

A. No, I didn't hear any explosion.

Q. After you saw that ball of fire did you know anything until you regained consciousness, sitting up against the bulkhead?

A. No, I didn't feel anything; I just passed out.

Q. You said, in answer to Mr. Matteson's question, that the explosion blew you to the bulkhead; do you know that to be the fact?

A. No, sir.

Q. Do you know where you were when you saw the ball of fire?

A. Standing at the window.

Q. Do you know where you were when you came to?

A. Yes.

Q. But how you got there you don't know?

A. No.

Q. When you regained consciousness and went through that window, Captain, did you have to open any window or was the window open?

A. If I remember right, the window was blown out.

Q. Do you recall observing it prior to the explosion?

A. Yes, I recall it. I recall it because I cut myself severely going through it.

Q. Had you ever seen the switchboard in the Seminole engineroom before?

A. No.

Q. I noticed that in responding to Mr. Matteson's questions when you spoke of Abel's throwing the last switch that he threw, you used your right hand to indicate it.

A. Yes.

Q. Did Abel use his right hand as he faced the board?

A. As nearly as I can recall he did.

Q. Did you have regular employment at that time?

A. Yes, sir.

Q. Will you tell us the name of your employer?

A. Mr. H. H. Windsor, Jr., of Chicago.

Q. Are you employed now?

A. Yes.

Q. By whom?

A. By Mr. Windsor.

Q. You have been employed by him for a number of years.

A. Yes.

Q. You were asked by Mr. Botts whether or not you received any benefits from the Palm Beach Company or from Mr. Riley. Let me ask you about the money that you have received. Will you please tell us what payments have been made to you, including amounts you obtained and how often, as well as you can recall?

A. Whatever the hospital bills cost I have no idea; I have never heard. After I was able to be moved home they sent me a check for \$225.00 a month, which took care of my house rent and an orderly and such things. Since then I have received a check for \$75.00, but there has been no understanding how long it will go on, how long it will last.

Q. Up to the current month you have been receiving \$75.00 a month?

A. Yes, up to the first of this past month.

Q. And you say that is not based upon any understanding whatever?

A. No, it is not.

Q. You were asked whether you had relinquished your claim. Have you signed any leases of any sort?

A. Absolutely none.

Q. Now has the fact that you have received money from the Palm Beach Company, or whatever source it came from, influenced your testimony in any way?

A. Not a bit.

Mr. Underwood:

That is all.

By Mr. Botts:

Q. Captain, when I asked you expressly about such payments, why didn't you tell me about that instead of waiting until you were questioned by Mr. Underwood?

Mr. Underwood:

We object to that; he wasn't so asked.

The Court:

The objection is overruled.

A. I told you as nearly as I could.

Q. Isn't it a fact that the reason that you did not tell me was because you didn't know until he questioned you that Mr. Underwood wanted you to tell the truth about this matter?

A. No, sir.

By Mr. Matteson:

Q. When was the change made from \$225.00 rate to the \$75.00 rate?

A. Several months after I had gone home.

Q. And you have been receiving that \$75.00 rate ever since?

A. Every month, yes.

Q. Regardless of whether you worked for anyone else or not?

A. Yes, sir.

Mr. Matteson:

That is all.

By Mr. Underwood:

Do you recall who it was that suggested the reduction?

A. Yes.

Q. Who?

A. Mr. Riley.

Q. As your expenses for your fare and treatment diminished, is it a fact that the payments made diminished in proportion?

A. That is right.

Mr. Underwood:

That is all.

By the Court:

Q. Let me ask you this: did you ever go into the engineroom?

A. No, your Honor, I didn't.

Q. You spoke about being blown through the window.

A. Well, I crawled through the window.

Q. What window was that?

A. That was the window that I was sitting under when I came to, that one on the outside, to the outside of the boat.

Q. It was the window between the companionway and the outside of the boat?

A. Yes.

Mr. Underwood:

May I ask him to indicate the window on this plan?

The Court:

Yes.

(By Mr. Underwood):

Q. Indicate on this plan the window through which you crawled.

A. This (indicating) was the window I was looking in, and this is the window into the engine room. I marked this window this morning.

The Court:

That is the one you crawled through?

The Witness:

Yes.

Mr. Underwood:

Does your Honor want to look at this blueprint?

The Court:

No; I think I have it pretty well in mind.

Mr. Matteson:

That is all.

The Court:

Are you through with this witness now?

Mr. Botts:

No, if the Court please. He had better remain in attendance, as we might want him further.

The Court:

Well, this hearing is scheduled to go on for some time.

Mr. Botts:

We have no objection to him going now, provided he is subject to coming back.

The Witness:

May I go back to Palm Beach?

Mr. Botts:

Subject to coming back here again, we have no objection.

The Witness:

Will you give me a little notice, a day's notice?

Mr. Botts:

We will be reasonable about that. Of course we will give you notice.

The Court:

You have his address, do you?

Mr. Botts:

No, I haven't but I guess the Marshal has it; the marshal served him. By the way, do you live with your uncle?

The Witness:

I will give you my address.

(Witness excused.)

357 Thereupon J. W. BRYANT was produced as a witness in behalf of the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Captain Bryant, what is your occupation?

A. I am captain of a private yacht.

Q. What yacht is that?

A. It is the yacht Marlin.

Q. Whose yacht is that?

A. Mr. Louis S. Rosenstein's.

Q. You are down here under subpoena, are you not?

A. Yes, sir.

Q. You came down from Palm Beach?

A. Yes.

Q. Where the boat is now?

A. Yes, sir.

Q. Captain Bryant, did you ever work for John S. Phipps?

A. Yes, sir.

Mr. Underwood:

I object to that as calling for a conclusion. I think the nature of any person's employment in this case is of the utmost importance. He should ask the witness for the facts and not for his opinion.

Mr. Matteson:

We will certainly develop the facts for you.

The Court:

The objection is overruled.

Q. Did you subsequently serve as Master of the yacht Seminole?

A. Yes, sir.

Q. Now will you tell us from the beginning how you came to work for Mr. Phipps and how you came to be Master of the Seminole?

A. Yes. It was the first of 1929; Mr. Phipps hired me to run his fishing boat; he had a 32-foot fishing boat, and he hired me as a fishing guide and also as a hunting guide out in the Everglades where he had a game preserve, and in the Spring of 1929 he had the Seminole chartered here in Miami and he asked me to come down and take charge of the boat.

Q. Mr. Phipps asked you to do that?

A. Yes, Mr. Phipps.

Q. When you say "Mr. Phipps" you are referring to Mr. John S. Phipps?

A. Yes, Mr. John S. Phipps.

Q. What was the approximate time that he asked you to take charge of the Seminole?

A. Why, it was in the Spring of 1929, if I remember right; the Spring of 1929.

Q. Do you know what Master you relieved?

A. Yes; his name was Captain Webber.

Q. He was captain immediately before you took over?

A. Yes.

Q. Were you advised or informed by Mr. Phipps or anyone else as to where you would get your wages and the money to run the boat with?

A. Well not at present when I came down here, no, but after I took charge of the boat and had orders to take the boat to New York I got my expense money from the Miami Shores Company—at that time I think it was—or the Biscayne Boulevard Company; they furnished me the expense money to take the boat up north with.

Q. Who told you to draw that money from the Miami Shores Co.?

A. I don't remember who it was; it was someone connected with Mr. Phipps' interests through the Palm Beach office; I just don't remember who it was.

Q. Was anything said by Mr. Phipps about that at the time he asked you to take charge of the Seminole?

A. No, not personally Mr. Phipps. I got my orders through different companies; through the Biscayne Boulevard Company and the Palm Beach Company; practically all of my orders came through them.

Q. After Mr. Phipps told you to take charge of the Seminole you received work from someone else connected with one of his companies?

A. Yes, sir, as I very seldom ever saw Mr. Phipps personally except when he was on the boat; maybe months at a time I didn't see him personally at all.

Q. How long were you Master of the Seminole?

A. At different times when she was in condition, practically couple—practically four years.

Q. How did you receive your expense money and wages during that time?

A. When we went to New York our expense money came from the Pittsburgh Building Corporation in New York; when I was at Palm Beach our expense money came from the Palm Beach Company.

Q. How did you come to make the trip to New York?

A. Mr. Phipps used the boat up there that summer.

Q. Mr. John S. Phipps?

A. Yes.

Q. What summer was that?

A. That was in 1929.

Q. Did you have any conversations with Mr. Phipps about matters connected with the yacht at that time?

A. Nothing more than generally what might go on, about the general upkeep and so on about the boat.

Q. Did you have any conversation with him about the upkeep of the boat at that time?

A. We do that at all times; I did that at all times I was employed by him if any work had to be done or anything like that. I would always take it up with the owner if it had to be done and when and how it should be done, which is customary.

Q. When you said "take up with the owner of the boat" whom do you mean?

A. Well the man who was using the boat at the time.

Q. Do you remember any specific matters which you took up with Mr. John S. Phipps?

A. No, sir; just the general upkeep of the boat and things of that kind.

Q. By "general upkeep" of the boat do you mean repairs?

A. Yes, repairs, painting or anything about a boat; anything about that was taken up with him.

Q. Repairs or alterations?

A. Yes.

Q. Can you tell us what the capacity of the gasoline tanks of the Seminole was?

A. Approximately two thousand gallons.

Q. There were four of them, were there not?

A. Four tanks, yes.

Q. Do you know what the gas consumption per hour was when running?

A. About 30 gallons.

Q. When you took over as Master did you make any trip right away at that time, do you recall?

A. A short time after I took it over, within a month, we went to Key West.

Q. Captain Bryant, can you tell us whether during the period you were connected with the Seminole—which I take was from 1929 to 1933, is that right?

A. Approximately that, at different times.

Q. During that period of time was there a draw-off valve for gasoline in the engineroom?

A. Yes, there was.

Q. And what was that used for?

A. Well for drawing gas to operate the launches and to take care of the auxiliary engines there was on deck and the outboard motors which we used and things like that.

Q. How was it used for that purpose?

A. It was used to put in tanks?

Q. I mean how did you get it from the draw-off valves to the various tenders?

A. We had a can we filled it from.

Q. What kind of a can?

A. Regular gasoline-oil can, the same as they have in filling stations.

Q. How big?

A. Five gallon.

Q. Would that be filled in the engineroom?

A. Yes, sir.

Q. Then would it be taken on deck; how would it be taken on deck?

A. Either through the hatch in the engineroom and sometimes would take the boat alongside of the window in the engineroom and pass the can out through the window to the launch.

Q. These launches when they were filled, were they on the boat deck of the Seminole?

A. Yes.

Q. In plain sight?

A. In plain sight on the top of the deck.

Q. Can you tell us whether Mr. John S. Phipps was familiar with this custom of filling the launches and tenders and fishing boats with that five-gallon can?

A. I suppose he was; I suppose he had seen it done. He had it a number of years and I think it was always done that way as far as I know.

Q. Could anybody very well be on the boat for any length of time without observing that?

A. No, I don't think so.

Mr. Underwood:

I object to that, your Honor.

The Court:

He has already answered it. I will overrule the objection.

Q. Were these gasoline tanks on the Seminole arranged in such a way that all of the gasoline could be drawn out of them?

A. That I really don't know; I never examined them that close, but if I remember right I don't think that it all would go out of the bottom of the tank.

Q. Why was that?

A. Well, the line was tapped up a little higher than the bottom of the tank.

Q. So that there was a part of the tank that was below the outlet?

A. Yes, sir. What I mean is that the gasoline would not be drawn from the bottom of the tank; there would be some left in it.

Q. I show you Exhibit 13 and ask you if this is the type of can that was used on the Seminole?

A. It was that type of can, yes.

Q. Of course you couldn't say whether this is the one or not?

A. It was that type of can that was used, yes.

Q. Did you see a funnel of the type of this one, Exhibit 14, used on the Seminole?

A. Well we had a funnel there that we used for filling tanks of the launches with.

Q. Was it like this one?

A. It was that type of funnel, yes.

Q. Captain, can you tell us what the practice was with respect to making the boat ready for storage when she was delivered at Pilkington's yard?

A. Well, the boat was taken in there and all of the furnishings inside was taken out, you know, and wrapped up in mothballs, such as pillows, curtains, bedding and everything like that, and the linens had to be looked after and the silverware and dishes cleaned; and the engineroom had to be cleaned out and everything in it and the engines greased and oiled.

Q. Who did all of that; who prepared the boat for laying up?

A. We had a crew on the boat.

Q. The master and the crew did that?

A. Yes.

Q. That was the custom?

A. Yes, that was the custom.

Q. About how long would it ordinarily take to lay up a boat like the Seminole?

A. Sometimes after a trip it would be four or five days or a week, maybe longer.

Q. Do you think a boat like the Seminole could be laid up properly within a period of two or three hours after arrival at Pilkington's boatyard?

Mr. Underwood:

I object to that; it is speculative.

The Court:

I think the objection is well taken.

Q. Do you think that when the boat arrived at Pilkington's yard under its own power that the necessary steps to lay up the boat properly could be done within two or three hours?

Mr. Underwood:

Objected to as calling for a conclusion.

The Court:

The objection is overruled. Captain Bryant, in answering the question you are instructed to take into consideration the factual condition of the mechanical equipment of the boat at the time the question calls for.

A. All right. Of course the laying up of a boat depends on how long the boat is going to be laid up, or whether it is to be taken out shortly afterwards, or going to be laid up for a definite length of time; if it is going to be laid up for a definite length of time, say several months, it will take quite a lot of work, but if the boat is going to be taken out in a period of two or three weeks it doesn't take so much.

(By Mr. Matteson):

Q. Let's add this to the question: Assume that she gets there around the middle of April and is going to be laid up for at least two months.

A. Well, that is a hard question to answer, because not knowing the conditions that the boat was laid up under. Sometimes the boat will be laid up—which I have done when I was on the boat—we would take the boat into storage and she would lay there and perhaps she had to have a lot of work done on her, and perhaps she would lay there two or three weeks before the work started—

Q. I don't want to press this, Captain, if it is so speculative. Perhaps we can go into it further after we hear from the witness on the other side as to exactly what her condition was at the time. Let me ask you some other things. While this boat was laid up at Pilkington's while you were there what was the custom with respect to visiting the boat and looking after her while she was in storage?

A. When we laid the boat up there it was understood that Mr. Pilkington had charge of the boat; he was supposed to look after the boat; the keys were turned over to him, and I understand he would go over the boat weekly or every ten days and inspect the boat to see that she wasn't leaking or anything like that.

Q. Was it the custom while you were Master to leave the keys to the boat with Mr. Pilkington?

A. Yes, sir.

Q. Did that include the keys to the engineroom?

A. Included all keys.

Q. Was it your custom to visit the boat while she was in storage at Pilkington's while you were Master?

A. I used to go down and look her over and inspect her and work on her when I was in Florida; part of the time I was in New York; when I was there in the summer, in New York, I don't know whether anybody went down to the boat or not.

Q. How important is the matter of ventilation in the engineroom of a boat of the type of the Semihole?

A. What do you mean?

Q. Read him the question.

(Question repeated by the Reporter as above recorded.)

A. It is very important that you should have ventilation.

Q. Important to have ventilation?

A. Yes, sir.

Q. Is that more important while she is laid up?

A. Yes, sir.

Q. Why is that important?

A. Well, you let fresh air go into the boat and that keeps it from mildewing and takes out the bilgy fumes which you get when boats are closed up tight.

Q. If the Seminole is laid up with her hatch and skylight and windows closed in hot weather for a period of a couple of months would there be a tendency of gasoline fumes accumulating in her?

A. There should not be unless there is leaks, because the vents from the tanks is all overboard, and of course the tanks are tight and below the deck, and of course if there was no leakage it would go overboard.

Q. And leakage would depend upon whether there was any seepage from the gasoline connections?

A. Of course.

Q. If there was any possibility of that would that be important?

A. Yes, sir.

Q. While you were Master of the Seminole did Mr. John S. Phipps ever visit the engineroom to your knowledge?

A. I think it—I think he was in the engineroom one time in the four years that I was on the boat.

Q. You remember him being there once?

A. One time.

Q. Did he go into the engineroom at that time?

A. Yes, he was down in the engineroom one time.

Q. Did he look around?

A. Not so very much.

Q. Can you tell me what sort of gauge was used on the tanks of the Seminole?

A. Glass gauge.

Q. What type of gauge was that?

A. I think you would call it a steam gauge or water gauge.

Q. Like a steam gauge or water gauge on a boiler?

A. Yes.

Q. Round glass tube?

A. Round glass tube, yes.

Q. How tall was that gauge?

A. It went the full length of the tank.

Q. Do you know how tall those tanks were?

A. No, sir.

Q. If they were 72 inches tall then the gauges were 72 inches tall?

A. Yes.

Q. You were not the engineer of the boat, I take it?

A. No, sir.

Q. Now how did you come to give up your job as Master of the Seminole?

A. Well, they really didn't have anything more for me to do at the time they laid me off; they were not going to use the Seminole any more right away and he didn't have a need for me any longer, so that is the reason.

Q. Was there any reduction made in your wages before you left the Seminole?

A. Oh, yes.

Q. Who talked with you about that?

A. Mr. Riley.

Q. Did you have a talk with Mr. Phipps about the reduction of your wages?

A. No, sir.

Q. Who is Mr. Riley?

A. Why, at that time he was kind of manager of the Palm Beach Company, assistant manager of the Palm Beach Company; he had charge of the—

Mr. Underwood:

He had charge of what?

The Witness:

Of the boats at that time.

(By Mr. Matteson):

Q. His office was in the Palm Beach Company?

A. Yes.

Q. What do you mean by "he had charge of the boats"?

A. When Mr. Phipps wasn't there he gave orders for the boat; at least I got orders for the boat; I got my orders from him when Mr. Phipps wasn't there.

Q. When Mr. Phipps was there who did you get the orders from?

A. Some of them came from him and some through the office.

Q. What sort of orders?

A. That they were going to use the boat, or something like that, and I would get orders sometimes that Mr. Phipps would be there at a certain time and to get the boat ready, such orders as that.

Q. You are referring now to Mr. John S. Phipps?

A. John S. Phipps.

Q. Do you know what kind of "washers" there were on the gasoline gauge?

A. No, sir.

Q. Do you know whether it had a petcock at the top or bottom?

A. No, sir.

Q. Or shutoff valves?

A. No, I couldn't tell.

Q. Tell me this: in laying up the Seminole at Pilkington's Yard, where she was going to be there for some length of time, say two months or more, was it customary to disconnect her batteries?

A. We never did except in one year when we took the batteries out; we took the batteries out one year that I was there and had them overhauled and put back in. The batteries were always connected.

Q. Captain Bryant, I would like to refresh your recollection if I can: do you recall a conversation with Mr. Phipps during the year 1932 with respect to times getting hard and it being necessary to reduce your wages?

A. Yes, he told me that in New York.

Q. Just tell me all about that.

A. Well; that was when hard times was coming on and the depression had started. Of course everybody was getting their wages cut at that time. I was getting a fairly good salary, and of course I expected a cut. Mr. Phipps spoke to me one day and said he thought he was going to have to reduce my wages and that he was sorry he had to do it, and I told him I understood the situation and that I supposed I would have to take a cut with the rest of them, so he reduced my wages.

Q. Was your wages reduced more than once?

A. Twice.

Q. How did you come to leave the Seminole?

A. As I say, Mr. Phipps—they told me that they were not going to use the boat any more and would not have any use for me; they were practically giving up boating altogether, so that is the reason I left.

Q. This conversation in New York, in what year was that?

A. I don't remember what year it was.

Q. Was that shortly before you left the boat?

A. It was one year before I left the boat.

Q. You left the boat in 1933?

A. Yes.

Q. What month, do you remember?

A. I think it was in March.

Q. March of 1933?

A. March or April.

Q. So this conversation would be somewhere between March 1932, and March 1933?

A. Yes.

Q. What arrangements did they have for filling the tanks of the Seminole?

A. Well, they had a filler-pipe on the main deck of the boat.

Q. Did that stand above the deck?

A. Yes.

Q. Was it fastened to the deck?

A. I don't remember whether it was fastened to the deck or not, but I know that it went down through the deck into the top of the tanks; it stood about two feet high from the deck.

Q. You don't remember what kind of connection there was for that pipe?

A. No, sir.

Q. Did your tanks ever overflow in filling them?

A. If they had overflowed it would go overboard.

Q. That was an air vent?

A. Yes.

Q. What size pipe was that?

A. I don't remember; I would say about a half-inch pipe.

Q. Do you remember any occasion when the tanks overflowed and the overflow was not taken care of by that pipe?

A. No.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. Captain, I would like to have you explain just a little more as to how those vent pipes operated. Where did they enter those tanks?

A. Well, I couldn't tell you just how they were made fast to the tank, because I never inspected the top of the tanks, but they came up to the top of the tanks, leading up through the side of the boat; there was one that went over the side of the boat and one to the tanks; when you got the tanks full you could see the gas overflowing out through the vent pipe on the side.

Q. That was about a half-inch pipe?

A. I would say so.

Q. And there was a separate vent for each tank?

A. No. There was only one vent; I imagine they were made into a manifold, or something of that type, and worked across.

Q. In other words, there was one pipe that ran down to the separate tank; in other words, as I understand it, it was sort of a manifold, is that what you mean?

A. I never went down and inspected it.

Q. But in other words, there was just one vent pipe for all four tanks?

A. Yes, sir.

Q. And that run out through the side of the boat?

A. That is right.

Q. Now this filler-pipe, was there a filler-pipe for each tank, or was that in the form of a manifold pipe running down to each tank?

A. That was in the form of a manifold.

Q. When you wanted to fill the tanks did you have any cutoff valve from this filler-pipe so that you could run the gasoline into only one tank, or did you run it into all at the same time?

A. I don't remember.

Q. You don't know whether there was a diversion connection there to divert it from this pipe into one tank only?

A. No.

Q. When you wanted to fill the tanks you just run gasoline into this one pipe until you had as much gasoline in all the tanks you desired?

A. I suppose that is the way it was; I wasn't the engineer. I know they used to fill the tanks up, but I don't know all about the valves.

Q. What was the size of this filler-pipe?

A. I don't know the size; I would say it was about two inches.

Q. It was very much larger than the vent pipe?

A. Much larger.

Q. If you had an excess of gasoline in there the vent pipe would not have been able to take care of all of the gas that got into the filler-pipe, is that right?

A. Yes.

Q. Now, Captain, what month in 1929 did you say your employment started?

A. I started on New Years.

Q. That was the first of January, 1929?

A. Yes.

Q. And continued until sometime in April or March of 1933?

A. Yes.

Q. As I understand it, Captain, during your entire employment you would on occasions receive orders directly from Mr. Phipps and on other occasions would receive them from the Palm Beach Company or some other company with which he was connected, is that right?

Mr. Underwood:

If your Honor please, I object to that. I think he ought to be more specific about that. The purpose, of course, is to tie up Mr. John S. Phipps. I think I am entitled to have the time and the place and the nature of the conversation stated above.

The Court:

The objection is overruled.

(By Mr. Botts):

Q. Do you want the question read to you again?

A. Yes.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. Now, does that mean that the orders were for the Seminole or general?

Q. With reference to the Seminole.

A. Well, I can't say that I remember—I can't say that I ever did have direct orders from Mr. Phipps, no more than to say "we are going to use the boat", or such and such, or "you must get the boat ready"—

Q. During that period whenever he wanted the Seminole he told you to get the boat ready and you would do so?

A. Yes.

Q. Sometimes you would be told by others to get the boat ready?

A. Yes.

Mr. Botts:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Let me see if I get this straight. There are three of us you have to contend with: you can't say that you ever had any orders from Mr. John S. Phipps relative to the Seminole except something, as, "I am going to use the boat", or "I am going to use the boat next Tuesday; let's have it ready"?

A. Something of that sort.

Q. And nothing more?

A. No.

Q. Now, Captain, what other boats did you work on up at Palm Beach for various members of the Phipps' family?

A. Well, I never worked with anybody excepting J. S. Phipps.

Q. What other boats did you work on of his?

A. We had the *Iolanthe*, which was a 75-foot boat.

Q. Which boat was it that you took to New York?

A. The Seminole.

Q. What year was that?

A. That was 1929, the first year I was with him.

Q. When did you become Captain of the Iolanthe?

A. I think it was that fall when we came back that I took the Iolanthe up?

Q. The fall of 1929?

A. Yes, or the early winter of 1930.

Q. On what boat were you first employed for the "Phippses"?

A. I was employed on the boat called the Clip, a small fishing boat that he had.

Q. Was that in 1929?

A. Yes.

Q. You went to work on the Clip on January 1, 1929, is that right?

A. That is right.

Q. You were hired by J. S. Phipps for that?

A. Yes.

Q. And not the Seminole on January 1, 1929?

A. No, sir.

Q. Now you said that you had with Mr. J. S. Phipps certain conversations about the general up-keep of the boat which referred to the Clip and the Iolanthe.

A. All of the boats.

Q. It didn't include the Seminole; did it?

A. Why, there were small things we had done, like painting and there was the upkeep of the boat, and things like that, something like that. Of course I would sometimes say to Mr. Phipps, "we need such and such", or something for the boat.

Q. When you say "such and such" what do you refer to?

A. Such as painting; maybe we would have to have the bottom of the boat painted, or something like that.

and I would tell him that I would have to have a certain amount of work done, or something like that, like hauling the boat out and painting the bottom.

Q. Do you remember any occasion when you ever talked to Mr. J. S. Phipps about hauling out the Seminole to have its bottom painted. I want you to be sure about that.

A. Yes, there was one time.

Q. What year?

A. Let's see if I can remember the year. I can't remember the year, but I know that was when we were to take a trip on the boat here; I know that when I was coming down here I bent a rudder coming down the river and I had to go to the Coconut Boat Yard to have it fixed up. I remember that because they were waiting on the dock for me when I got in here.

Q. What year was that?

A. I don't know what year it was; it must have been 1932; it was not 1933.

Q. You say that you were bringing the Seminole to Miami?

A. Yes.

Q. To meet Mr. Phipps and a party?

A. Yes.

Q. To go on a cruise, is that right?

A. Yes.

Q. And on your way down you bent a rudder?

A. Yes.

Q. And Mr. Phipps was on the dock when you got there?

A. Yes, waiting for me.

Q. You told him you couldn't go right away because you had bent a rudder, is that correct?

A. Yes.

Q. You told him you had to go out to the Coconut Grove Boat Yard to get it fixed, and he said "go ahead and get back as quick as you can"?

A. Something like that.

Q. Did you ever discuss with anybody ashore, anybody apart from the engineer of the boat, any requirements in the engineroom?

A. Nothing more than the crew.

Q. Any conversation that you ever had about conditions or requirements in the engineroom of that boat was confined to the members of the crew of the boat, wasn't it?

A. Yes, to a certain extent.

Q. The engineroom was not your job?

A. I had charge of the engineroom as well as any other part of the ship.

Q. In the same capacity as a Master usually has?

A. Yes.

Q. But the primary responsibility was for the engineer?

A. Yes, but it was on me if it wasn't done right.

Q. In other words, you had the responsibility but you didn't do the work down there?

A. Yes, sir; absolutely.

Q. You never saw Mr. Phipps operate those engines, did you?

A. No.

Q. You don't know whether he knew there was a drawoff valve in there or not?

A. No, sir.

Q. You don't know what he knew about the engineroom, do you?

A. I don't think it interested him so long as he had somebody there to take care of it. He had hired a man for that purpose and had a good man, so I don't know why he should have.

Q. Did you have good engineers?

A. Yes.

Q. Competent men?

A. The best I could get.

Q. Who hired the crew when you were on that boat?

A. I did.

Q. Who paid them; I mean who actually handed them the money?

A. I did.

Q. You never got that money from John S. Phipps, did you?

A. No.

Q. You got it either from Mr. Jim Riley in Palm Beach or Roy Hawkins in Miami, didn't you?

A. Yes; it came from one of the three offices.

Q. You were asked something about laying up a boat and about how long it might take, or some rather indefinite set of circumstances. Let me ask you this question: how long does it take to shut off the four gasoline valves to the tanks in the engineroom of the Seminole?

A. I don't know; it wouldn't take very long.

Q. Two minutes?

A. It might; about two minutes.

Q. Not more than two minutes?

A. I should say not more.

Q. The thing that takes the time is the hotel work, so to speak, the mattresses and the blankets and the curtains and the linens and the silver and washing down the bulkheads, if you do that, and so on, is that right?

A. That all has to be done.

Q. If you do a thorough and complete housecleaning job?

A. If you are going to lay up it should be done; you should not go off and leave dirty clothes lying around.

Q. You could though, couldn't you?

A. Yes, but it is not very customary.

Q. Now you said something about a conversation with Mr. Phipps about reducing your salary. Do you remember when that was?

A. I don't just remember.

Q. What year?

A. I think it was in 1932.

Q. What month?

A. I can't tell you; I can't remember what month it was; it was in the spring or summer; it was when I was at Westbury, Connecticut, and he came to me one day and told me that things were getting kind of tough, kind of hard to get money, and that he had to cut down his expenses all around and wanted to give me a cut in wages.

Q. What was the nature of your work at that time?

A. I was kind of an assistant superintendent of the estate at that time.

Q. Were you working on the Seminole at that time?

A. No.

Q. The Seminole wasn't in the north at that time, was it?

A. No, it wasn't in the north at that time.

Q. How many times do you suppose you have laid that boat up?

A. I don't remember?

Q. Half a dozen?

A. Yes, I should say I have. I kept a log of all of that stuff, but of course I don't have it.

Q. Did you ever drain the tanks—the gasoline tanks—of the Seminole?

A. No.

Q. Did you ever draw off that gasoline you could draw off before you laid her up?

A. No.

Q. You never did?

A. No.

Q. Pilkington knew that, didn't he?

A. I suppose he did; I don't know.

Q. You have spoken about some vent pipes from the gasoline tanks. Were there vent pipes that you know about on the Seminole?

A. From the tanks.

Q. Any other vent pipes that you know about?

A. You have to have vents to all tanks. Fresh water tanks have to have vents, and the gas tanks have vents.

Q. What other vents?

A. That is all the vents we had in there.

Q. Do you know about any vents apart from the tank vents?

A. Ventilators.

Q. Any other vents or ventilators that you know about?

A. She and two big ventilators in the engine-room.

Q. How big were they?

A. I don't know how big they were.

Q. I show you a photograph. Do you recognize that as a familiar object; is that a fair general representation of the Seminole?

A. A very good picture of it.

Mr. Underwood:

I offer that in evidence.

Mr. Matteson:

No objection.

The Court:

Let it be admitted.

(Thereupon the photograph above referred to was marked Respondents' Exhibit "B").

Q. The ventilators that you spoke about had cowls on them, did they not?

A. Yes, they did.

Q. This object right behind the white stanchion and slightly abaft of the center is one of the cowlis?

A. Yes.

Q. That let down into the engineroom?

A. Yes.

Q. And there was a corresponding one on the other side?

A. Yes.

Q. What other vents or ventilators do you know about on the Seminole?

A. I don't really know of any excepting the windows.

Q. You do not know remember any other vents?

A. There were some small pipes coming up back of the after-house which was a vent down in the after-quarters, or the crew's quarters.

Q. How many of those do you remember?

A. Four of them.

Q. Where were they?

A. Two aft of the dining salon and two just forward of those ventilators there that was on the deck; just about a three-inch gooseneck pipe.

Q. Did you ever trace those down?

A. No.

Q. Do you know how far down they went?

A. No.

Q. Isn't it a fact that there were eight, four on each side?

A. There might have been; I don't remember. I do remember that there were four; there was four that I know of; I know that all right; I remember four.

The Court:

Do they show on the picture?

Mr. Underwood:

No, your Honor.

The Court:

What do you call them?

The Witness:

I would call them bilge ventilators, because they went down through the ceiling of the boat so they couldn't be seen; they came to the top of the deck and had wire screen over the ends.

Q. The purpose was to force air down in the engine-room through the cowl ventilators and pass down in the bilges and up through—

A. I imagine so.

Q. That is what air would do if you got a good force of air down these funnels, is that right?

A. Yes, sir.

Q. How many methods of entering the engineroom of the Seminole were there?

A. Really only one.

Q. Which is that?

A. One hatch from the deck; it could be gotten into from the window in the side of the alley-way—

Q. How big was that window?

A. I would say about three feet square.

Q. A man could climb through that easily?

A. Yes.

Q. Beneath that window there was a work-bench?

Q. And the bottom of the window—

A. That was the outside window you are referring to?

Q. I am talking about the window that led in the engineroom, into the four-foot alley-way.

A. No bench in there.

Q. Are you sure about that?

A. Yes.

Q. I am talking about a bench on the inside of the engine-room under that window.

A. Not coming from the alley-way.

Q. Well, there was one under the port window?

A. Yes.

Q. How high was the bottom of that window, the one that led into the alley-way; how far from the alley-way floor?

A. About waist high.

Q. Between three and four feet?

A. Yes.

Q. It was a window three feet square?

A. I would say that it was; it had one pane of glass in it.

Q. That window swung on hinges forward, did it?

A. Yes.

Q. Back up against the bulkhead?

A. Yes.

Q. It swung back up against the bulkhead and hooked there?

A. Yes.

Q. And that was a window about three feet square?

A. About that.

Q. That window from the alley-way was a perfectly normal and frequent method of access in the engine-room?

A. Very seldom used.

Q. You mean while the boat was in operation?

A. Very seldom used anyway, because it went into the main cabin; there was no steps from it to go into the engine-room; that was merely for ventilation; it was more for ventilation than anything else, and gave light on that side; it was never used except for that.

Q. You could go in that way?

A. Yes.

Q. You don't remember any lock on that window, do you?

A. Nothing more than a hook.

Q. It didn't require a key to open or shut it?

A. No.

Q. Access to the engineroom through that window was had from this four-foot alley-way and you got into that alley-way by coming in the after door on the lower deck?

A. Yes.

Q. Is that right?

A. Yes.

Q. So that if you got to that after-door you would go into the engine-room?

A. If it was hooked on the inside; that hook was on the inside of the window.

Q. Isn't it a fact that the hook was on the outside?

A. No, the hook was on the inside.

Q. When did you last see the hook on the inside?

A. That swung in, and you could open it from the engine-room side.

Q. Do you know where the hook was in the spring and summer of 1935?

A. No. I am talking about when I was there.

Q. I am not clear whether I have asked you this before, Captain Bryant, or not: you got your money from the Palm Beach Company or the Biscayne Boulevard Company or one of the companies?

A. One of the companies.

Q. By check?

A. By check.

Q. And Mr. J. S. Phipps never paid you personally?

A. No, sir.

Q. Your salary was paid you by check?

A. Yes.

Q. And how your salary was charged you of course don't know?

A. No.

Q. Now do you remember a man by the name of Simmon in the Miami office?

A. Yes.

Q. What did he have to do with the Seminole?

A. I don't know what his capacity was.

Q. What did he have to do with the Seminole?

A. When I took the Seminole over here I was sent from the Palm Beach office and told to go down and report to Mr. Simmon and Mr. Simmon took me over to the Seminole and turned it over to me.

Q. It was Simmon who turned the boat over to you?

A. Yes.

Q. It was Simmon who gave you the keys?

A. The captain of the boat did. I relieved another captain on the boat.

Q. Was it Simmon after that who gave you your checks?

A. No; Mr. Simmon gave me money to take the boat to New York with and I believe that's all the dealings I had with him; I don't think I had any more dealings with him after that.

Q. When did you bring the boat back?

A. That fall.

Q. Did you ever have any dealings with Mr. Simmon that fall?

A. I don't remember having any.

Q. You had a revolving fund of expense money?

A. Yes, I had for a time, while the boat was in condition and we used it.

Q. You would spend some of the money that Simmon gave you to pay expenses and you would make a report of it?

A. Yes.

Q. Showing the balance on hand?

A. Yes.

Q. And you would receive a check for some money to bring it back up to the original amount?

A. Yes.

Q. From whom did you receive that money?

A. I got the original money from Mr. Simmon and when I got to New York I turned my expense account over to Mr. Peterson of the Pittsburg Building Company.

Q. And for none of that did you account to Mr. John S. Phipps?

A. No.

Q. You accounted to Simmon or Peterson?

A. Absolutely.

Q. And got your instructions from them?

A. Absolutely, except there might have been some remarks made like, "we are going to use the boat; get the boat ready."

Q. Just the same kind of remarks that a characterer might make who had chartered the boat, is that right?

A. I suppose so.

Q. You had been captain of boats that have been chartered?

A. Yes.

Q. You know what a charterer says: "I want to go fishing down on the Keys; I want to leave Tuesday morning." That is the sort of thing that J. S. Phipps told you, isn't it?

A. About the same thing.

Q. And in truth, Captain Bryant, his instructions to you were confined to just about that sort of thing, isn't that true?

A. Yes.

Mr. Underwood:

That is all.

The Court:

We will take a five-minute recess.

(Recess.)

The Court:

Proceed.

By Mr. Botts:

Q. Captain Bryant, this boat, the Clip—is "Clip" the name?

A. It really never did have any name on it; it didn't have any name written on it, but that is what they called it. I don't know how they spelled it.

Q. Whose boat was that?

A. J. S. Phipps'.

Q. You operated this Clip in going on fishing trips and so forth?

A. Yes.

Q. And the Iolanthe you operated also, didn't you?

A. Yes, sir.

Q. And you operated the Seminole?

A. Yes, sir.

Q. And whenever you received instructions from some source that you recognized as being authoritative you operated whichever boat you were told to operate?

A. Yes.

Q. A great many times you received instructions from the Palm Beach Company or from Mr. Riley, or from Mr. Hawkins or from Mr. Simmon and sometimes you received instructions from Mr. Phipps, is that right?

A. Yes.

Q. Now your pay was the same and it came from the same source no matter what boat you were operating on, is that so?

A. Yes.

Q. Now, Captain, did you ever take Mr. J. S. Phipps on any extended trips, I mean like a week or two at a time?

A. Yes.

Q. Would you take along a fishing boat like the Clip, or some similar boat and go on day-time fishing expeditions?

A. No, we never took the Clip; we sometimes chartered a boat with a fishing guide on it.

Q. Sometimes accompanied by another boat?

A. Yes.

Q. And sometimes you used outboard motor boats from the Seminole, did you?

A. Yes.

Q. When you took along any other boat or boats did you furnish the gasoline for those other boats to operate on from the tanks of the Seminole?

A. Yes.

Q. Mr. Phipps was aware of that, wasn't he?

A. Yes, I suppose so.

Mr. Underwood:

I object to that, as to what Mr. Phipps was aware of.

The Court:

The objection is sustained.

(By Mr. Botts):

Q. How would you remove this gasoline from the seminole?

A. If we wanted to use any gas from the boat we would draw it out in cans and put it in the boats.

Q. And that gas was taken out openly where anybody on the Seminole could observe it?

A. Yes.

Mr. Underwood:

I presume you mean anybody who was on deck who was in position to see what was being done?

Mr. Botts:

Certainly.

(By Mr. Botts):

Q. Now you have given us this cut in your wages as in the summer of 1932 when you were working up on Mr. Phipps' estate in Connecticut.

A. New York.

Q. In New York?

A. Yes.

Q. And that was the estate of Mr. J. S. Phipps that you were working on?

A. Yes.

Q. And the Seminole was laid up at that time, was she?

A. Yes.

Q. When you laid her up was that done under your supervision?

A. Yes.

Q. When you came back down here did you put the Seminole back in condition?

A. Yes.

Q. And that was done by you or under your supervision?

A. Under my supervision.

Q. When Mr. Phipps up there told you that your salary would be reduced, Captain, was it reduced?

A. Yes.

Q. And you still got your salary from the same sources that you had been getting it?

A. Yes.

Mr. Botts:

That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. By "source" you mean the same person handed you the check or mailed it to you?

A. Yes, I suppose it came from the same source.

Q. But the source of the money you don't know?

A. I don't know where the money came from.

Q. You don't know whether the money came from Mr. John S. Phipps or the Seminole Boat Company or what company, do you?

A. No.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. After your wages were reduced, did you again operate the Seminole?

A. Yes.

Q. At the reduced rate?

A. Yes.

Q. Now, Captain, you spoke of logs being kept on the Seminole; did you keep logs during the period you were master of the Seminole?

A. Yes.

Q. What was done with those logs?

A. We left them on the boat; they were left on the boat.

Q. Were any of them turned over to anyone while you were there?

A. No.

Q. These cowl ventilators led from the deck into the engine-room, did they?

A. Yes.

Q. Did they go below the deck of the engine-room or just to the—

A. I don't remember; they were not very far down.

Q. When you say "deck" you mean the top of the engine-room?

A. Yes, the top of the engine-room.

Q. Did the engine-room have steel floors?

A. No, sir.

Q. What sort of floors did they have in the engine-room?

A. Wooden floors.

Q. Wooden floors?

A. Yes.

Q. Do you want to leave the Court with the impression that all of the engineering, so far as laying up a boat of that type is concerned, was to shut four valves off?

A. Well, I don't know the circumstances of how the boat was laid up or anything like that, or the period of time or anything else.

Q. Assume that she is laid up for a period of two months or more.

A. There is a lot more to do than that; a lot more to do than to shut off the valves; I always used to take more time than that.

Mr. Matteson:

That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. Mr. Botts asked you if you laid the Seminole up in 1932, the year you stood the cut, and you said you did, is that right?

A. Well, I was working on the boat at different times; I can't say just exactly the date that I laid her up, but I used to go down on the boat—I don't remember whether we had her up that fall before or not, or that spring rather—1932.

Q. Do you remember whether you were in charge of the boat when she was laid up that spring?

A. Yes, I was in charge of the boat all of the time, every time she was laid up, until the time I was discharged.

Q. Until the time you were discharged?

A. Yes.

Q. Do you say that you are the one who was in charge of the boat when she was put back into condition that fall?

A. I don't remember whether we used it that fall or not.

Q. You don't remember that?

A. No, sir.

Q. Do you remember how much gasoline there was in the tanks of the boat when you laid her up that spring?

A. No.

Q. Do you have any recollection of that?

A. How much there was in there I don't know; I don't have any idea how much.

Q. Do you remember looking at the gauge and seeing the level of the gasoline?

A. No, I don't.

Q. No recollection at all on that?

A. I know there was gas enough in the boat to take her to the yard and we never took any out when we left; I couldn't tell you how much there was left in there, because I never read the gauge; I couldn't tell you whether it was five hundred gallons or three hundred gallons.

The Court:

You are asking him about the spring of 1933?

Mr. Underwood:

1932, your Honor, when they laid her up.

(By Mr. Underwood):

Q. Do you remember how much gasoline there was in the tanks when you came to take her out in the fall?

A. No, I don't remember; that was left up to the engineer. If the engineer told me he needed gas I would buy it; I don't remember how much was in there. Of

course the engineer kept a log in the engine-room, which I very seldom saw, unless I had reason to go down and look at something on it.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. When you took the boat north that summer, after you became Master, whose flag did you fly on that trip, do you remember?

A. J. S. Phipps'.

Q. Was he on board at the time?

A. No, he did not make the trip.

Q. I understood you to say that you discussed with Mr. Phipps such matters as varnishing the boat and—

A. Yes.

Q. Or painting the bottom?

A. Yes, when the boat was in condition and I thought there was need of some work being done I would tell him about it; I would tell him about it and allow a period of time so that he could make his plans for his trip. I couldn't take the boat out to paint the bottom without notifying him.

Q. Did he ever authorize you to make—

Mr. Underwood:

I object to that as calling for a conclusion, if your Honor please; we ought to have the conversation.

(By Mr. Matteson):

Q. Did you ever have a conversation with him about authority to make such repairs or alterations?

Mr. Underwood:

May we have him answer yes or no?

The Court:

The question calls for a yes or no answer.

A. Yes.

Mr. Matteson:

That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. When you were discussing varnishing the boat with Mr. J. S. Phipps, Captain, your purpose was to find out whether it was convenient for him to have you varnish something or other so that it would not interfere with the use of the boat?

A. Yes.

Q. And the same thing applies to painting, doesn't it?

A. Yes.

Q. Who told you to fly J. S. Phipps' flag?

A. I don't know where I got the authority from, but it is customary.

Q. I don't want "customary"—

A. I don't remember where I got the authority from.

Q. You don't remember who told you to do it; you don't remember whether anybody told you to do it, do you?

A. No, I don't.

Q. You have done it entirely on your own, is that right?

A. That is right.

Mr. Underwood:

That is all.

Mr. Matteson:

That is all.

Mr. Botts:

You can come down, Captain.

(Witness excused.)

402 Thereupon: GEORGE WHITTING was called as a witness in behalf of the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Mr. Whitting, what is your occupation?

A. Proprietor of a machine shop.

Q. Where is that shop located?

A. At West Palm Beach.

Q. How long have you operated a machine shop up there?

A. Since 1915.

Q. Do you do yacht work there?

A. Yes.

Q. Did you have anything to do with the conversion of the Yacht Seminole from a steam yacht to a gasoline yacht?

A. Yes.

Q. Would you tell us what you had to do with that?

A. Well, some of our men were there on the boat—to start with, there was a steam plant originally in the yacht and the equipment and everything in connection with that was removed and gasoline equipment installed in place of it. Some of our equipment was there for removing this material, cutting it off and so forth, and also

there was quite a lot of repair work on the hull outside, such as rusty plates.

Q. Did you do that work?

A. Yes.

Q. Did you have anything to do with the installation of the tanks in the gasoline engineroom?

A. In a way we did.

Q. Tell us how much you had to do with that.

A. Where the tanks were located the place was originally used for coal bunkers, and we had quite a bit of cutting and fitting of these plates for installing the tanks in this place that was originally used for the coal bunks.

Q. What do you mean by "cutting and fitting plates"?

A. Well, as near as I can recall it was like a bulk-head across the boat, and this made a container to hold this coal; that compartment was probably four feet wide and the width of the boat, that is, four feet in length, and set up from the bottom of the hull probably 36 inches. These tanks were set in that compartment. After the tanks were setting in there this compartment had to be closed off, so these plates were removed to put the tanks in there.

Q. Did you put the plates back?

A. Yes.

Q. Did you do some cutting of holes in the plates, if you recall?

A. That I don't know. The original plates that were in there were for holding the coal.

Q. Did you have charge of the installation of the tanks in the gasoline engines?

A. No.

Q. Who did that work?

A. We did under the direction of the captain of the boat.

Q. Under his direction you did just the tanks you mentioned to us?

A. Not the complete installation of the tanks.

Q. You just did specific things you were asked to do?

A. Yes.

Q. You did not install the tanks?

A. Well, this happened some eighteen years ago. As far as finishing the complete installation, sir, we didn't do that; we might have had some of our men there helping to put the tanks in place.

Q. Who did the job; who had charge of it; who was doing the work?

A. The captain of the boat was in charge of the work and he had a crew on the boat; a great deal of the work was done by the crew.

Q. Was it a contract job?

A. What?

Q. Was it a contract job?

A. No, sir.

Q. It was done by the captain and the crew, is that right?

A. Yes.

Q. With such assistance as they got from you?

A. Yes, in the way of cutting material or anything of that sort; we were called upon to do that.

Mr. Matteson:

That is all.

Mr. Botts:

I do not have any questions.

Cross Examination.

By Mr. Underwood:

Q. Do you remember the captain's name?

A. I do.

Q. What was it?

A. Captain Fred Nelson.

Q. Do you know anything about him?

A. I don't exactly understand why you mean.

Q. Do you know anything about his experience as a sailor?

Mr. Matteson:

If your Honor please, I have called this man only as a fact witness to show who it was that made the changes. I haven't asked him opinions or anything, and I don't think this is cross examination.

Mr. Underwood:

May we have the question read?

(Thereupon the preceding question was read by the Reporter as above recorded).

Mr. Underwood:

I will withdraw the question.

(By Mr. Underwood):

Q. Your only contract in that work was with Captain Nelson, is that right?

A. What?

Q. Your only contract in that work was with Captain Nelson?

A. Yes.

Q. You did whatever you did on a time and material basis?

A. That is right.

Q. How much did you participate yourself in the work that was done?

A. I was there most of the time.

Q. Did you see the gasoline tanks being installed?

A. We were working in the hull there, and this was adjoining the engineroom at the time, and we were there about the job while the tanks were being put in.

Q. Did you men put the tanks in?

A. No.

Q. You simply built the compartment?

A. No, the compartment was already there.

Q. Perhaps I should say you opened it up and closed it up?

A. Yes.

Q. What have you examined to refresh your recollection before testifying here today?

A. What?

Q. What have you examined to refresh your recollection before testifying here today?

A. Nothing.

Q. Have you got any records of that job left?

A. I don't think so.

Q. You have looked for them, haven't you?

A. No, sir.

Q. You have not looked for them?

A. No.

Q. What other contractors were working there at the time; do you remember what others were there?

A. I don't think there were any others there.

Q. You are not sure about that?

A. No, but not in connection with the part we were doing; I am quite positive there was no one else there.

Q. You said something about the tanks being a certain height above something. What is your recollection about that?

A. Well, this is of course as near as I can remember, — the tanks set about 36 inches above the bottom of the hull.

Q. You mean above the floor of the engineroom?

A. No, the actual bottom of the boat.

Q. The skin of the boat?

A. Yes; that is as near as I remember those measurements; I never measured it at any time that I know of.

Q. How do you happen to remember the dimensions after eighteen years?

A. Well, the tanks were, as near as I can recall, about five hundred gallons capacity tanks and about 36 inches in diameter, or something like that, and eight feet in height, or probably seven feet, and the compartment where they went in there, where these tanks were placed, was something about four feet wide, that is, the length of the boat where the coal bunks were located, because we had considerable work to do in that part of the boat. These figures which I am giving you are approximate figures.

Q. After that elapse of time you really can't be very definite about that, can you?

A. No, I can not.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Were there any plans drawn up for the work that you did?

A. Not that I remember.

409 Thereupon: THOMAS JOSEPH ANDERSON
was called as a witness in behalf of the Libelants,
and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Your name is Thomas Joseph Anderson, Jr.?

A. Yes, sir.

Q. Where do you live?

A. Pompano, Florida.

Q. What is your occupation?

A. Seaman.

Q. Were you at Fort Lauderdale, Florida at the time of the fire in Pilkington Shipyard?

A. Yes, sir.

Q. What were you doing there?

A. Well, I was working on a boat up on the lakes and I came home for four days and this happened during the time I was at home.

Q. You were visiting your father?

A. Yes; he worked at the yacht basin.

Q. He was working at the yacht basin at the time?

A. Yes.

Q. Your father is related to Mr. Pilkington—to Mrs. Pilkington, is he?

A. Yes, sir. Mrs. Pilkington's brother and Captain Pilkington's brother-in-law.

Q. Is that your father you are speaking of?

A. I am speaking of my father, yes.

Q. In other words, you are Mrs. Pilkington's nephew, is that right?

A. Yes.

Q. Where were you when the fire broke out?

A. I was right on the place.

Q. Do you remember whereabouts?

A. Well, I was in my father's house.

Q. Just tell us what you remember about it and what happened. Speak up loud, so we can all hear you.

A. I just came back from Miami, back to Fort Lauderdale, and it was around noon time and I was eating dinner at the time when I heard the explosion, and I went out—my wife and I went down to the waterfront, which is about one hundred and fifty yards from the house, about one hundred and fifty yards from the house down to the waterfront, and after we got down there we saw the yacht Seminole in flames and my aunt—first I tried to get across the Seminole; I went across another boat to get to the

Seminole, and the flames were coming out all over her deck and I couldn't make it to the Seminole, so I came across on this other boat and got back ashore again.

Q. What was the other boat you went across; do you remember what that was; was it the Blue Lagoon?

A. Yes.

Q. Was it lying alongside the Seminole?

A. Yes, on the port side.

Q. When you saw the flames coming out of the Seminole, Mr. Anderson, where were they coming out?

A. Amidships, sir.

Q. To what extent were they coming out?

A. Well, after the explosion the funnel had dropped aft and was laying fore and aft.

Q. On the deck?

A. It crashed just as I came aboard the Blue Lagoon, and I saw then I couldn't make it, so I came back in.

Q. Where were the flames coming out with reference to the funnel?

A. Amidships from the funnel had been, where the funnel had crashed out, coming right out of the deck.

Q. Coming out of the deck around the funnel?

A. Yes, over the engineroom hatchway; through the engineroom hatch.

Q. How large a flame was it?

A. Well, there was quite a bit, mostly smoke and everything was coming out.

Q. Could you tell from the smoke what was burning?

A. No, sir; I couldn't tell from the smoke; it was just a thick smoke.

Q. What color smoke?

A. It was kind of black; I didn't take very much notice to the smoke.

Q. So you couldn't make it and you went back?

A. Yes.

Q. Then what did you do?

A. I went back and helped my aunt—we were afraid at that time, the flames were spreading from boat to boat, that they would spread over and the house would catch fire, and they wanted to save all of the papers we could out of the house, and I helped my aunt take out all of the valuable papers that they had in there and moved them to a place where they wouldn't catch fire.

Q. What did you do after that?

A. After that?

Q. Yes.

A. My wife was standing by the waterfront and heard someone call for help; I couldn't place the call for help; I heard it myself, but I couldn't place it; I knew it was in the yard somewheres around the boats, and I went overboard after the man that was overboard.

Q. Was that John Thomas?

A. Yes, sir.

Q. Did you swim out and get him?

A. Yes.

Q. Where did you find him?

A. I found him on the other side of the slip; on the other side of the basin.

Q. How did you get him back?

A. I couldn't get him back to the land, so I kept him afloat, holding him up—he was already in water that he wouldn't sink in; but I held him up until somebody got out there to help us.

Q. Then somebody came to you?

A. Yes.

Q. What did you do after that?

A. I helped fight the fire with the regular fire department.

Q. The fire department arrived?

A. Yes.

Q. What did they do?

A. Well, all they did was just to spread, spray water on the Seminole. Their only idea was to preserve—they

knew they couldn't save the boat, but they wanted to save the man's body that was already lost in there, or whatever was left of it.

Q. They placed water in the Seminole?

A. Yes.

Q. Do you know how long the Seminole remained afloat?

A. I don't; I imagine it was over one hour after the fire started.

Q. After you got back from getting Thomas, did you see the Seminole burning at that time; was the Seminole burning then?

A. Yes, it was.

Q. What sort of flames were coming out of her then?

A. All of her super-structure was burned off; all of the woodwork was burned off.

Q. Do you know anything about gasoline on the Seminole; do you know whether or not there was any gasoline on the Seminole?

A. Yes.

Q. What do you know?

A. I know that the night that we pumped her out I worked on the salvage gang—I know that when we were raising the Seminole she had gasoling on her, because we had to shut off our pumps after we got her raised above the water on account we were afraid of igniting the fumes again, or igniting the gas again.

Q. Where did you see the gasoline then?

A. Gasoline was all over the bilges.

Q. How much gasoline was there, much or little?

A. There was quite a lot because the fumes was so bad we had to shut down our engines.

Q. Where did that gasoline come from, could you tell?

A. Out of her tanks.

Q. Is there any way that you know it came out of the tanks?

A. No, I couldn't say; that was the only place that it could have come out of; there was nothing else left to hold any gas.

Q. Do you know anything about Captain Pilkington's rules with respect to having gasoline on the boats that were stored there?

Mr. Underwood:

I object to the rules, if your Honor please, unless there is some connection with the Respondent I represent.

Mr. Matteson:

I want to show the general practice. We have a claim against Pilkington as well as against you.

The Court:

Is there not a better way of proving rules; were there printed rules?

Mr. Matteson:

No printed rules.

The Court:

Isn't there a better way of establishing the rules rather than by this witness.

Mr. Matteson:

I think we will have to ask several witnesses as to what the rules were. This is the only way we will ever get to the bottom of it.

The Court:

Your objection is that it was not brought home to the Respondent you represent?

Mr. Underwood:

That is right; no connection whatsoever.

The Court:

I will overrule the objection subject to it being connected up with the objecting Respondent. He can answer the question:

A. No, I don't know anything about his rules.

Q. Do you know whether the Seminole had any drain line in her engineroom compartment from which gasoline could be drawn?

A. Yes, sir. Not at the time it caught fire, however.

Q. What is that?

A. I know that when I worked on the Seminole about a year and a half before it caught fire—I worked in the engineroom and at that time it had a spigot leading into the engine-room, and you could turn it on and draw your gas out.

Q. It was the practice to use that on the boat, was it?

Mr. Underwood:

I object to that; there is no foundation for that.

Q. How long were you on the boat?

A. I was on the boat about a month; I was not working on the boat for the company doing the repair work; they had hired a man in Fort Lauderdale to do that and he subcontracted it; and I worked for the man who subcontracted the job.

The Court:

He wasn't on the boat any time the boat was being operated?

Mr. Matteson:

No.

Q. This boat was laid up at that time?

A. Yes.

The Court:

I think the objection is well taken.

(By Mr. Matteson):

Q. Did you ever work on any other boat that you could draw gasoline out of the tanks in the engineroom?

A. No, sir.

Mr. Underwood:

I object to that as immaterial.

The Court:

What is the materiality of that?

Mr. Matteson:

It is simply corroborative of a lot of other evidence that has been put in that should not be there.

The Court:

I think the objection is well taken.

Q. Now, do you know where her tanks were located?

A. Yes.

Q. Where were they located?

A. They were located forward of her engineroom.

Q. You saw the gasoline drawn from the tanks into the engine-room?

A. How was it drawn?

Q. Yes, how were the tanks connected up?

A. They were upright and they were standing on end; there were four tanks and they were built on a platform about as high as that table there, I suppose.

Q. That was in the old coal bunker?

A. Yes.

Q. Where were the outlets from the tanks?

A. Well, I don't know just where the outlets were; I know that each tank had an outlet from it.

Q. Was there a space under the tanks?

A. Yes.

Q. Did you go into that space at any time?

A. No, sir; I never went under there. The only thing I know is that there was a little alleyway into the old bunker space, and there was about, I guess, a foot high—

Q. Tell us in feet how high it was.

A. It wasn't quite three feet; it was probably close to three feet high and maybe eighteen inches or two feet wide.

Q. You are speaking of the opening into the—

A. Into the old bunker space.

Q. Did you look in there while you were there?

A. Yes; I just took a look in there.

Q. What was that space used for?

A. Just for the tanks is all.

Q. This space was under the tanks, wasn't it?

A. No, sir; this was opening into the old bunker; I just looked in there to see what was in there, and I saw that there was tanks in there, and there wasn't room for anything else.

Q. The tanks were above the bottom of the vessel?

A. Yes, they were above the bottom.

Q. When you say you looked in there and saw tanks, are you referring to gasoline tanks?

A. Yes, sir.

Q. What was the space under the gasoline tanks used for; do you know?

A. Well, it didn't seem to be any more than just bracing, platforms and things for the tanks.

Q. You were employed by Mr. Crabtree for this job?

A. Yes.

Q. Do you know who employed him, or anything about that?

A. Mr. Johnson.

Q. Mr. Johnson was Mr. Crabtree's associate, was he?

A. No, sir. Johnson, from what I understood, had taken the job and Crabtree had subcontracted it.

Q. Who gave Johnson the job; state whether or not you know anything about that.

A. From what I heard him talk about.

The Court:

Not what you heard; just what you know.

Q. You say you don't know?

A. No.

By Mr. Botts:

Q. How long after the explosion was it that you reached Mr. Thomas and rescued him, took him in this skiff?

A. I imagine it must have been fifteen or twenty minutes, I guess.

Mr. Scott:

That is all.

Cross Examination.

By Mr. Underwood:

Q. This shed had sides on it?

A. No, sir.

Q. No sides at all?

A. Well, it had slabs with openings four inches apart, and that was only along certain parts of the Basin; that was only alongside where the Seminole was tied up, just to keep the sun off.

Q. It had a roof on it?

A. Yes.

Q. Which way did the shed face; if you were in the shed and wanted to take a boat out in which direction would you go?

A. Well, I think it faces about northeast, I imagine.

Q. On which side of the Basin was the Seminole?

A. She was on the—wait a minute; if I could get the Basin straight I could tell you. It is facing about northeast, judging from the way the streets run around there.

Q. It was divided into two halves, wasn't it?

A. Yes, sir.

Q. A cat-walk down the middle?

A. A main Basin like this (indicating), and then it had cat-walks on each side of the main Basin.

Q. Two cat-walks?

A. One cat-walk that I know of; I never was in the place before the explosion; I just looked around and didn't take very much notice as to just how it was.

Q. Now assuming the shed faced east, that is, as one stood in the shed and wanted to take a boat out, he would move the boat east—the Seminole was on which side, north, south, or—

A. South side.

Q. How near the southern wall was the Seminole, do you remember?

A. It was right up against the southern wall.

Q. And the Blue Lagoon, how far from the Seminole was she?

A. She was laying right beside her.

Q. Right up against her?

A. Yes, on the port side.

Q. The Seminole was brought in the shed?

A. Yes.

Q. The starboard side against the wall of the shed?

A. No, her starboard side was against the port side of the Seminole.

Q. Was the Seminole's bow in?

A. Yes.

Q. And her starboard side was against the wall of the shed?

A. Yes.

Q. How far in from the outer end of the shed was the Seminole's stern?

A. Her stern was just underneath the shed; just clear of the shed.

The Court:

As I understand, the Blue Lagoon was on the Starboard side of the Seminole?

The Witness:

No; she was on the Seminole's port side.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. In whose house were you when you heard the first explosion?

A. I was in dad's house; it belonged to the place, though, but dad was just living there.

Q. How far from the shed is that?

A. Between one hundred and one hundred and fifty yards.

Q. On which side of the dredged channel is that?

A. That is on the northeast side.

Q. The side opposite from which the Seminole was on?

A. No.

Q. The shed was between you and the Seminole?

A. Yes, on the shore; built out from the shore.

Q. So that when you came out of the house because of the explosion you had to go down and into the shed before you could see the Seminole, is that right?

A. Yes.

Q. How many boats were burning at that time?

A. The Seminole was the only one was the only one that was on fire.

Q. Any fire on the Blue LaGoon at that time?

A. No.

Q. What boat was ahead of the Seminole?

A. I don't know what boat was ahead of the Seminole, for the reason I didn't see how—

Q. How many explosions did you hear altogether?

A. Only heard one.

Q. Was that the only explosion you heard?

A. I heard several after that, but that was the first one I heard.

Q. Do you know how many altogether you heard?

A. I don't know.

Q. For a long time did you continue to hear explosions?

A. For about forty-five minutes or an hour; I never paid any particular attention to it.

Q. Every now and then an explosion would happen as the fire would reach some new boat?

A. Yes.

Q. Of course you know that the Seminole's gasoline tanks did not explode?

A. I am not sure.

Q. You saw them when they were pumping them out?

A. Yes.

Q. Didn't you see that they were not exploded?

A. I didn't see all of them. From what I could see, sir, I didn't see any exploded tanks.

Q. Would you describe the fire on the Seminole as a hot fire or—

A. It was a dangerous looking fire; it was kind of hot too.

Q. A big fire?

A. Yes, sir.

Q. You saw flames coming out around the place where the stack had been, did you?

A. Yes.

Q. Did you see flames coming up from other places too, do you remember?

A. No, sir.

Q. Just through the opening where the stack had been?

A. Yes, sir.

Q. Did you see any flames coming out of her windows?

A. No, I didn't.

Q. You saw no flames coming out of the Seminole except above the stack hole?

A. Just above the stack hole, and at her engine-room companion-way, just beyond the stack hole, about that square (indicating), there were flames and smoke coming out of there.

Q. Out of the engine-room hatch?

A. Yes.

Q. All that you saw apart from those flames was the smoke?

A. Just the smoke and flames. I saw the whole thing, and I thought you were talking about that one particular thing.

Q. I am talking just about the Seminole.

A. I saw the thing burn down.

Q. After you got back from helping Thomas then she was flaming from stem to stern, was she?

A. She was flaming all over.

Q. The flames you saw from the stack hole and the engine-room hatch was just the flame you saw the first time?

A. Yes.

Q. What time did the pumping begin that night; what time did they start pumping her out that night, if you know?

A. No, sir; I have forgotten now just what time it did start.

Q. Do you know what time it stopped?

A. We stopped pumping when—

Q. When something happened to stop you from pumping what time was that?

A. What time did we stop?

Q. Yes.

A. It was around twelve or one o'clock.

Q. The following morning?

A. I am not sure whether it was the following morning or the morning after that; it was the morning after we started pumping; I don't know what the exact time is.

Q. Now where was the pumping when the pumping was going on?

A. It was on the starboard side.

Q. Was it on the Seminole or on something else?

A. No, it was on a barge; it was mounted on a small barge.

Q. Where was the barge with respect to the Seminole?

A. It was on the Seminole's starboard side, right alongside the engine-room.

Q. Was there room for the barge between the Seminole and the—

A. Yes.

Q. And the barge was there?

A. Yes, it was a small barge about twenty by eight or ten.

Q. What kind of pump was it?

A. Six-inch centrifugal pump, or four inch.

Q. You spoke about seeing gasoline in the Seminole at that time.

A. I didn't see any gasoline.

Q. In the Seminole?

A. I smelled it though; the fumes were awfully strong and we had to shut down.

Q. You did not see any gasoline at all but you smelled it?

A. That is correct; the fumes were so strong that you could tell gasoline was there.

Q. Where you when you smelled the gasoline?

A. Alongside the Seminole; the Seminole was raised so that we could look down—the Seminole was raised enough so we could look around for the man's body.

Q. When you were on the barge you smelled gasoline?

A. No, sir.

Q. Where were you?

A. On the Seminole.

Q. What part of the Seminole?

A. Near the engine-room.

Q. Down in the engine-room?

A. No; on the wreckage on top of the engine-room.

Q. On what remained of her deck?

A. Yes.

Q. You didn't see any gasoline down in there?

A. No, sir.

Q. It was just the general odor of gasoline?

By Mr. Underwood:

Q. Now you said that this gasoline came from the Seminole's tanks in response to Mr. Matteson's question, but I think you also said that the reason you said it came from her tanks is because you didn't know of any other place where it could have come from, is that right?

Q. You did not see any gas come from her tanks as that time, did you?

A. I didn't see any gas, but I could smell it.

Q. I would like for you to describe for me a little better the hole that you spoke of, the opening in the forward hulkhead of the engine-room, the square opening.

A. Well, the engine-room—

The Court:

Do you want to use this?

Q. I show you Libelants' Exhibit 9 which is a photograph taken sometime after the fire. Point out the square opening you marked with the letter "A". Is that the hole you refer to?

A. If this is the forward bulkhead in the engine-room, it is.

Q. This is intended to represent the forward bulkhead of the engine-room?

A. Yes, and that is the hole.

Q. Is that the one you refer to?

A. Yes, and on the outside of the bulkhead was the tanks.

The Court:

Where are the tanks?

The Witness:

Just on the other side of this bulkhead, right under here (indicating); the tanks were upright tanks.

(By Mr. Underwood):

Q. Where did you say the bottom of the tanks was with respect to the top of that opening?

A. Well, I suppose they were just on a level with the top of the opening.

Q. Mr. Botts asked me to make it clear that this opening that we are speaking of is more or less rectangular, the opening shown on Exhibit 9, which is marked with a line and the letter "A". That is, what we have been talking about, is it?

A. Yes.

The Court:

Where is that with reference to this blue-print?

Mr. Underwood:

This is the engineroom forward bulkhead and that hole is in the middle of the bulkhead, the square hole.

(By Mr. Underwood):

Q. I am not clear whether you remember what was immediately beneath these gasoline tanks; do you remember?

A. Only the bracing and the framing.

Q. Do you remember that they set in pans?

A. No, sir.

Q. You don't remember whether they did or not?

A. No, sir.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Let me show you this photograph and see if you recognize it; do you recognize that paper?

A. Yes, I recognize the picture but I don't know what position it was taken from.

Q. What is it a picture of?

A. It is a picture of the fire after everything was burned up; it is of the Yacht Basin.

Q. Can you see the Seminole in that picture?

A. Not unless this is the Seminole here (indicating) she is the only—

Q. Are you able to say whether that is the Seminole or not?

A. I couldn't say whether this is the Seminole or not.

Mr. Matteson:

Let me mark that photograph for identification.

(Thereupon the photograph above referred to was marked Libelants' Exhibit 36 for identification.)

(By Mr. Matteson):

Q. I show you this other picture and ask if you recognize that?

A. Yes, I recognize it.

Q. What is it a picture of?

A. It is a picture of the yacht basin.

Q. Apparently the fire is still blazing in that picture?

A. Yes.

Q. But you cannot identify the boats there?

A. No, sir.

Mr. Matteson:

We will mark this one for identification.

(Thereupon the photograph above referred to was marked Libelants' Exhibit No. 37 for identification.)

Mr. Matteson:

That is all I want to ask him.

The Court:

The witness was asked about seeing gasoline during the pumping operation. I understood him to say that he didn't see it but that he smelled it. I am a bit confused there as to whether or not the Seminole was partially saturated with gasoline—

(By Mr. Matteson):

Q. Will you explain that to us?

A. The Seminole had upright tanks and the outlet for the gasoline was at the bottom of the tanks, and while she was sunk the pressure of the water, I imagine, held the gasoline in the tanks from coming up, and after pumping the water out of her it decreased the pressure on the

tanks and gradually the gas started coming out, and when we were pumping we were pumping a mixture of gasoline and water; we pumped bilge water and gasoline out of her; that is all until we got all of the water out.

Q. Do you know that you were pumping a mixture of gasoline and water in the pumping operation?

A. I would not be sure and I could not prove it, but there was a terribly strong odor, in fact, it was so strong that we were afraid that the exhaust from our pumping engine would ignite it again.

Q. You went entirely by the odor as far as you were concerned?

A. Yes, and the rest of them did too.

Re-Cross Examination:

By Mr. Underwood:

Q. I want this clear: you told me, as I understood, that you went entirely by the smell, is that right?

A. Yes, by the smell.

Q. And you told me definitely that you did not see any gasoline, is that right?

A. Yes, I did not see any gasoline.

Q. You don't actually know whether there was any gasoline in the Seminole's tanks at that time or not, do you?

A. I do not.

Q. You do not know that?

A. No.

Q. You knew there was the smell of gasoline and you say it was because of gasoline that the pumping was stopped?

A. Yes, sir.

Q. And that is all you know on that subject, is that right?

A. Yes.

The Court:

We will recess until tomorrow morning at 9:30.

(Thereupon the hearing was recessed until 9:30 A. M. March 16, 1937.)

March 16, 1939; 9:30 A. M.

431 Thereupon: WILLIAM A. MINTER was produced as a witness in behalf of the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Mr. Minter, what is your full name?

A. William A. Minter.

Q. What is your occupation?

A. I am now Master of the vessel Marpatcha.

Q. You are a Master of yachts?

A. Yes, sir.

Q. Did you serve on the Yacht Seminole for a time?

A. Yes, about the 3rd of 4th of March, if I am not mistaken, until the 23rd day of December, 1929.

Q. In 1929?

A. Yes.

Q. Who was Captain of the yacht at that time?

A. There was a Master there; the first one was Captain William Webber, and he only remained there a few days after I accepted the position as engineer, and then Captain Bryant.

Q. In what year was this?

A. 1929.

Q. In what capacity did you serve on the yacht Seminole?

A. I served as Chief Engineer.

Q. Who employed you as Chief Engineer?

A. Captain Webber.

Q. Will you tell us the circumstances under which you were employed?

A. Well, I had just gotten off the Serrano, which was owned by Rodman Wanamaker, Sr., and Captain Webber came to the house.

Q. Who came with him?

A. Mr. Phipps.

Q. Which Mr. Phipps?

A. Mr. John Phipps, I think.

Q. What happened when they came to your house?

A. They just asked me would I accept a position as engineer on the Seminole, and that there was a charter aboard.

Q. Who asked you that?

A. Captain Weber.

Q. Did Mr. Phipps take part in the conversation?

A. No, sir.

Q. You talked to me in Palm Beach on Saturday, was it, or Friday?

A. No, sir; I talked with you on Sunday; I arrived there Sunday afternoon.

Q. Sunday afternoon at Palm Beach?

A. Yes.

Q. To refresh your recollection, Mr. Minter, didn't you tell me at that time that Mr. John S. Phipps employed you as engineer of the Seminole?

A. I don't remember saying that; Captain Webber was the man who employed me.

Q. Mr. John S. Phipps did come with Mr. Webber when you were employed?

A. Yes, sir.

Q. I wish you would recall and refresh your recollection as well as you can what part, if any, Mr. John S. Phipps had in your employment.

A. He had none whatever; he was just with Captain Webber, and Captain Webber asked me would I take the position, which I accepted.

Q. Mr. John S. Phipps came with him?

A. Yes.

Q. You were on the Seminole for the full part of the year, I take it?

A. From about the 3rd or 4th of March until the 23rd of December.

Q. What were you doing during the time; what was the Seminole doing?

A. When I accepted the job she was chartered by Mrs. Williams; her name was Mrs. Williams then, but she was formerly known as Ann Murdock.

Q. How long did that last?

A. She had the boat the remainder of March, that is, the month of March.

Q. After that what did you do with the Seminole?

A. We went up north to Port Washington.

Q. For what purpose was that?

A. It was for the family to use it; I presume they did.

Q. Who did use it during that summer?

A. The Phipps family.

Q. When you say "Phipps family" who do you mean?

A. John S. Phipps' family.

Q. It was used during that summer by him?

A. By his family, yes. I never saw him aboard, though.

Q. Was he or any other member of his family on the boat on the trip north?

A. On the trip north, no, sir.

Q. What flag did the Seminole fly?

A. She was flying John S. Phipps' flag at that time, that is, after we arrived in Port Washington.

Q. Now I would like to ask you about the arrangements in the engineroom of the Seminole. How many gasoline tanks did she have?

A. There were four.

Q. And where were they located?

A. Located in the old fire room just forward of the engines.

Q. How were they placed in there?

A. They were placed on a big platform with a lead tray.

Q. There was a platform in there, was there?

A. Yes, sir.

Q. How was that with respect to the engineroom floor?

A. Oh, I should say it was about a foot above.

Q. Was the tray that you speak of on the platform?

A. Yes, and the tanks set in that.

Q. The tanks set in the tray?

A. Yes, sir.

Q. Was there any drain from that tray?

A. No, sir.

Q. Was there any covering on the tray?

A. No covering, no, sir; the tanks just set in there the same as you would set something in a box; that is all.

Q. Now how were the tanks connected in the engineroom?

A. They were connected by a manifold; all four were connected together, and all four were operated at the same time, although you could fill them independently by closing the valves.

Q. Where was the filling line located?

A. Up on the deck.

Q. What did the filling-line consist of?

A. Let's see; about a two and a half inch pipe.

Q. How was it connected with the tanks?

A. By a manifold.

Q. And the filling pipe, did that come down in the engineroom?

A. The filling pipe came down on the other side; in other words, it entered the port tank first.

Q. It had a filler manifold?

A. Yes, and also a drain manifold.

Q. These valves that you speak of for the filling manifold, were they on the engineroom side of the bulkhead?

A. Yes, as a matter of fact, the whole manifold was on that side.

Q. How did it go to the tanks?

A. By a nipple going right through the bulkhead.

Q. There was a hole in the bulkhead?

A. Yes.

Q. And a valve on each tank?

A. Yes.

Q. Then there was a similar manifold connected to the tanks at the bottom?

A. At the bottom, yes.

Q. Did the valves come through the bulkhead?

A. Yes; the valves were all on the inside of the engineroom.

Q. Was there a drain valve from which you could draw gasoline in the engineroom?

A. Yes.

Q. What use was made of that?

A. It was to draw gasoline for the small boats.

Q. How was it fed from the drainline to the small boats?

A. By cans.

Q. I show you this can, Exhibit 13, and ask you if that is the type of can that was used?

A. No, sir. I never saw any can like that on the boat; all I had was these ordinary oil cans, the same as you get lubricating oil in, with a screw-top on it.

Q. Square can?

A. Yes; that is all I used.

Q. After drawing it into this can in the engineroom, how would you get it up on deck?

A. I would have one of the boys lower a line and make it fast and bring it up.

Q. Through the hatch?

A. Yes, and if the boat was alongside I could pass it through the engineroom window.

Q. Did you use a funnel or something in filling these cans that you speak of?

A. Yes.

Q. I show you exhibit No. 14, is that the type of funnel?

A. That is the type, yes.

Q. About that size?

A. Just about.

Q. Was there a gauge or something by which you could determine the gasoline in the tank?

A. Yes, there was a glass tube.

Q. How was that hooked up?

A. That was hooked to the manifold where you could check each tank.

Q. How big was the gauge?

A. The gauge that went directly from the manifold up to the deck was, I would say, about two or three inches from the deck.

Q. As high as the tanks?

A. Higher than the tanks.

Q. That was a glass tube?

A. Yes.

Q. Did this guage have valves on it?

A. Yes, sir.

Q. At the top and bottom?

A. Not on the top; just on the bottom.

Q. At the top was it connected up with the tanks on the manifold line?

A. No, sir; the gauge was in a piece of pipe and the whole front of it was cut out, and then there was a cap-screw on top of the pipe, with a little hole in it for a vent.

Q. For a vent at the top?

A. Yes.

Q. Was there a petcock or something of that kind at the bottom of the gauge?

A. That I don't remember.

Q. How were the gasoline feedlines connected for the engines?

A. They were connected by a brass pipe right to the manifold and down to the carburettor.

Q. Where were they connected to the manifold?

A. Well, I would say about a foot and a half or two feet from amidships on either side.

Q. Were there any strainers or traps on these feedlines?

A. Next to the carburettors, yes.

Q. Next to the carburettors or next to the manifold?

A. Connected to the manifold and then to the carburettor.

Q. Physically, where was the trap?

A. The trap was, I would say, a foot forward of the carburettor.

Q. Wasn't it close to the manifold?

A. No, not when I was on it.

Q. What sort of floor was there in the engineroom of the Seminole?

A. Wooden floor.

Q. Was that over steel?

A. No, sir.

Q. A solid floor, was it?

A. Well, it was removable, that is, by different hatches; you could take the whole floor up there in ten or fifteen minutes.

Q. What means of ventilation was there in the engineroom?

A. I had two windows on the port side; then you had a big three-foot hatch above, and then I had a fan in there.

Q. Were there some cowl ventilators?

A. No, sir.

Q. No cowl ventilators?

A. Wait a minute; there was one up on deck.

Q. That came down upon the deck, did it?

A. Yes, it came down; it was just a hole through the deck.

Q. What type of carburettors did you have?

A. Now you have asked me a question; if I am not mistaken I think they were Scheblers.

Q. I show you this contrivance which has been marked Libelants' Exhibit 17; is that what you call a trap?

A. Yes, sir; strainer.

Q. Strainer?

A. Yes.

Q. Can you tell us whether this is the one that was on the Seminole when you were there?

A. No, sir; the one that I had when I was there was four inches in diameter, I think.

Q. Four inches in diameter?

A. Yes.

Q. Was there a shut-off valve on the feedlines near the manifold?

A. Yes; there were two shut-off valves; there was one right there at the manifold and another one just forward of this trap that I am explaining.

Q. What sort of valves did you have on these drainlines?

A. When I was on her she had Jenkins' valves.

Q. One or two?

A. Two.

Q. Can you recognize whether this Exhibit No. 11—

A. No, sir.

Q. You can't recognize that?

A. No, sir.

Q. Were the valves that you had on the drainlines similar to those?

A. It had an enclosed head.

Q. What do you mean by that?

A. In other words, it was absolutely enclosed and the thing came out of the bottom; in other words, you could take a plug off the bottom and you could remove this with a screwdriver and go ahead and operate your—

Q. Is that a better type of valve than this?

A. Yes.

Q. Is that a valve that is constructed for gasoline?

A. Yes.

Q. The Jenkins valves are made for that purpose?

A. Yes.

Q. What kind of valves are these?

A. They look like a Crane.

Q. It has the name of Crane on it.

A. I see.

Q. What sort of seat did the Jenkins valves have that you had there?

A. It had a renewable seat on this plug that you took out at the bottom.

Q. A flat seat?

A. No, it was a round seat; I would say about 40 degrees.

Q. Conical shaped?

A. Yes.

Q. With about a 40-degree taper?

A. Yes, about a 40-degree taper.

Q. I show you this connection of pipes—

The Court:

Before you get off of that drain valve, is that drain valve attached to—

The Witness:

To drain gasoline.

The Court:

From the tank?

The Witness:

From the tanks to the engine.

The Court:

You don't call that a feed pipe?

The Witness:

Yes, it is a feed pipe.

A. Yes, it is a feed pipe.

Q. I don't want any confusion; when we were talking about the engine valves and comparing them with Exhibit 11, I understood we were referring to the drawoff lines which were used for drawing gasoline into the engineroom; is that right?

A. Yes, that is true too; as a matter of fact all the valves I had, I think, were Jenkins valves, every one of them.

Q. We have talked about all kinds of valves?

A. Yes.

Q. We have talked about the valves on the drainline for drawing off gasoline in the engineroom?

A. Yes, sir.

Q. Also talked about the shutoff valves in the feed line?

A. Yes, sir.

Q. You say the valves which were on the drawoff line were Jenkins valves?

A. Yes, all of them.

Q. Gasoline valves "A" all of them.

Q. Now I show you this connection of piping, Libelants' Exhibit No. 2, which is said to have been a part of the manifold line on the Seminole. Do you recognize that?

A. No, sir, because the manifold, if I am not mistaken, was much larger than that; that might have been one that connected down from the manifold, down through that little auxiliary generator.

Q. Your recollection is that the manifold was larger than that?

A. Yes.

Q. The manifold, as you recall it, was all connected with connections similar to this?

A. Similar, yes.

Q. Referring to Exhibit 2?

A. Yes.

Q. Did it have angles, joints and unions in it?

A. Yes, plenty of them.

Q. There was some space under the tanks, was there?

A. Yes.

Q. How did you get into that space?

A. You got down on your knees and hands and crawled in there.

Q. What was that space used for?

A. Used to use it for carrying odds and ends, outboard motors.

Q. How much outboard motor equipment did you have?

A. I think there was ten or eleven.

Q. Ten or eleven what?

A. Outboard motors.

Q. Would they be kept in this storage space under the tanks?

A. In that compartment.

Q. What would you use them for?

A. Used them for the outboard boats.

Q. For fishing?

A. Yes.

Q. Did you use them for anything else?

A. No.

Q. Getting back to this filling line for a moment, did they stand above the deck?

A. They stood up about two feet above the deck.

Q. Where did that pipe end?

A. It ended in the manifold.

Q. Connected there by a right angle—

A. By an elbow.

Q. On these gas traps that you spoke of, what provision was made for draining them?

A. There was a petcock under the under side of it; you could also remove the top of it and take the strainer out and dump it; there were two ways of cleaning it.

Q. And that was true of all these strainers that you speak of?

A. Yes.

Q. You were employed on the Seminole for a number of months. What did you do after that?

A. After I left the Seminole?

Q. Yes.

A. I went to work for myself.

Q. That was about what time?

A. That was just after Christmas, or the first of the year.

Q. Did you work again on the Seminole at any time?

A. No, sir.

Q. During that period of time from March until about the first of the year were you on the Seminole all of the time?

A. Yes. Not to the first of the year, but to the 23rd of December.

Q. You were on there all of that time?

A. Yes.

Q. Was she laid up any part of that time?

A. No, sir.

Q. This was all in 1929?

A. 1929, yes.

Q. Now you are attending here under subpoena, are you not?

A. Yes, sir.

Q. And you talked with me on Sunday afternoon in Palm Beach?

A. Yes.

Q. Have you talked with the lawyers for Mr. Phipps or any of his representatives since that time?

A. Only a gentleman came up and asked me what I knew and I told him I knew no more than what I have told here.

Q. When was that?

A. Either Friday or Saturday of last week.

Q. Was that before I saw you or afterwards?

A. Yes.

Q. It was before?

A. Yes.

Q. Who was it that came up to see you at that time?

A. Mr. Underwood.

Q. Have you talked with Mr. Underwood since that time?

A. Only said "Good morning" to him this morning; that is all.

Q. Did you discuss the question of your testimony; as to your employment, with Mr. Underwood?

A. Yes, sir.

Q. Did you tell him that you had told me that Mr. John S. Phipps was your employer?

A. No, sir.

Mr. Underwood:

I object to that, if your Honor please; there is no proof that he made that statement to Mr. Matteson. He is trying to cross examine his own witness; furthermore, that couldn't have happened because my conversation with this gentleman was prior to Mr. Matteson's conversation with him.

The Court:

It is not in evidence as to when he talked with Mr. Underwood about the employment. He said he talked with him since Sunday, just to say "Good morning". When

he talked with him about the employment is not clear; it is not clear whether he talked with him then or after.

Q. Was it this morning that you talked with Mr. Underwood about your employment?

A. No, sir.

The Court:

I will sustain the objection.

Q. Do you deny that you told me that you were employed by John S. Phipps?

Mr. Underwood:

I object to that; this is his own witness.

The Court:

I don't think the basis for a hostile witness has been laid, Mr. Matteson.

Mr. Matteson:

If your Honor please, if you talk with a witness and he tells you one thing and then goes on the stand and says something else, you are entitled to go into that.

The Court:

You covered it, and he expressly answered it. Now you are asking that question again.

Mr. Matteson:

He simply said that he didn't remember it.

The Court:

I think he was very explicit about it. I think the answer was to the effect that Mr. Phipps did not participate in the conversation.

Mr. Underwood:

That is the way I understood it.

Mr. Matteson:

Other than by his presence.

The Court:

I will sustain the objection.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. Captain, I want to ask you some questions, and probably some of them will not sound sensible. I do not understand a lot about these things, and I do not know whether the Court does or not, but I want to try to get some information about some of these things; This article here, Exhibit 17, that is a bullet-shaped thing; what is that?

A. It is a gasoline filter.

Q. One of these would be the intake and the other would be the outlet line?

A. Yes.

Q. And between these two there would be a—

A. Screen.

Q. A screen?

A. Yes.

Q. Then on the intake side of this device there should be a cutoff valve?

A. Yes.

Q. So that trash or anything which got into this could be cut off and cleaned out?

A. Yes, and this top removed to take the screen out. There is a petcock in there too.

Q. Now referring to Exhibit 11, these two Crane valves, did I understand you to say that these are not gasoline valves?

A. I never saw these valves before.

Q. What are those; are they water valves?

A. That is what they are supposed to be.

Q. You made the statement that the Jenkins valves which were on the gasoline lines when you were in charge were superior for purposes of gasoline lines to the Crane valves.

A. Yes.

Q. Will you explain why that is true?

A. It is a differently constructed valve; it is a much tighter valve, and these other valves might start leaking most any time.

Q. That is what I want to get at; in other words, a valve of this kind is subject to leakage whereas the other one is not?

A. That is right.

Q. With reference to the engineroom floors, those were removable in sections?

A. In sections, yes.

Q. What was the purpose of removable floors in the engineroom?

A. To get down to the pipeline and clean the valves and that stuff.

Q. In other words, those removable sections enabled a person, if they were so disposed, to get down and keep the valves clean and make any adjustments in pipelines and so forth that might be necessary; is that right?

A. Yes, sir.

Q. What pipe lines were underneath that floor?

A. Water pipe lines.

Q. Not gasoline?

A. One on each side of the motor; two little gas pipes going to the carburettors.

Q. They were above the floor?

A. Below the floor, made fast to the engine-bed.

Q. You stated that there was a larger filter in there when you were on the boat. Where was that filter in rela-

tion to the gasoline feed lines that supplied the carburettor?

A. About one foot or a foot and a half forward of the carburettor, under the floor and screwed up to the engine bed.

Q. And you say the filter was also underneath the flooring?

A. Yes.

Q. Then, as I understand it, the gasoline would flow out of the tanks through the supply manifold and then the line would split, one going to one engine and one to the other?

A. No, sir; we had two lines, one on either side; one went to the starboard motor and the other to the port motor.

Q. Both of them came out of the supply manifold?

A. Yes.

Q. Was there a separate filter for each of these gasoline lines?

A. Yes, sir.

Q. Now were there any valves, cutoff valves, or anything underneath the floor?

A. One on each side and they was just forward of that filter.

Q. Forward of the filter?

A. Yes.

Q. That would put them between the tanks and the filter, would it?

A. That is right.

Q. That would be the valve that would be shutoff to cut off the gasoline supply when it was supposed to clean this filter?

A. Yes.

Q. Or if for any other reason you wanted to cut off the gasoline line it was cut off between the filter and the tanks?

A. Yes. As I told you, there was one cutoff valve just below the manifold and the other one just forward of the filter; making two cutoffs.

Q. So that you could cut off the gasoline from the filter between the filter and the tanks?

A. Yes.

Q. You could also cut off the gasoline from the carburettor between the filter and the carburettor, am I right?

A. That is right.

Q. This second cutoff valve, was that above or below the floor?

A. It was below, but the handle of the valve was above the floor.

Q. So that it could be manipulated by—

A. Raising the floor.

Q. Was that also true of the cutoff valve between the filter and the tanks?

A. Yes, sir.

Q. Both of them could be manipulated by removing the floor and they were actually located below the floor?

A. That is right.

Q. Both of those cutoff valves were the Jenkins cutoff valves, were they?

A. Yes.

Mr. Botts:

That is all.

By Mr. Matteson:

Q. What has become of Captain Webber?

A. Captain Webber is dead.

Q. Your boat had just arrived at Palm Beach the Sunday when I saw you there?

A. Yes.

Q. Where had you been before that?

A. Miami; I just left Miami Sunday morning.

Q. Was it in Miami that you talked to Mr. Underwood?

A. Yes.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. This strainer that is on this trap, or whatever you call it, has a fine mesh wire on it?

A. Yes.

Q. Copper?

A. Yes.

Q. Now then suppose the strainer in the trap should become ruptured or broken or worn out and had holes in it, what would happen?

A. You could get sediment and all of that stuff in your carburettor.

Q. What is the ordinary practice with reference to cleaning those traps; how often would it normally be done?

A. I always did it once a week.

Q. Should there be any defect in the screen you renew the screen?

A. I tore it off and soldered a new screen on it.

Mr. Botts:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Captain, will you draw me a picture of a Jenkins valve?

A. I am not a very good draftsman.

Q. Do the best you can for me.

A. The type I had on—

Q. The type you have been speaking about, and maybe Mr. Botts and I will understand it.

(Witness makes diagram.) There is supposed to be a hole here and a hole here (indicating).

(By Mr. Underwood):

Q. Mark "hole" there.

A. (Witness indicates on diagram).

Q. That is where the gas comes in and goes out?

A. Yes. Now this was removable, this plug (indicating).

Q. Draw a line from there and write the word "plug".

A. All right.

Q. That up there (pointing) is the handle?

A. Yes.

Q. Draw a line from that and write the word "handle".

A. All right.

Q. Show me the direction of the flow of the gasoline through that valve.

A. Well, this hole was down here; I misplaced the holes.

Mr. Underwood:

He drew at the left of the diagram a second hole and scratched out with a pencil the first one. The witness indicates on the left side with a line between this hole, the intake, and writes the word "intake". Witness indicates the intake side by the word "hole", and below writes the word "outlet".

Will you draw a line through that, a wavy line, showing the flow of the gas from one hole to the other?

A. (Witness indicates).

Mr. Underwood:

Witness draws a line from the lefthand hole through the plug and on over to the righthand hole.

(By Mr. Underwood):

Q. Is this piece from the bottom to the top indicating the piece that is at the bottom of the stem, all one piece or does it separate when you open the valve?

A. It separates.

Q. Is this (indicating) the plug?

A. No; here is the plug (indicating).

Mr. Underwood:

Witness indicates that the plug, the thing in which I write the letter "X" and mark with a line "X", is the plug.

A. That is right.

Q. What do you call this piece here (indicating)?

A. That is the seat.

Q. Draw a line from that and write the word "seat".

A. (Witness indicates).

Q. So the thing we have marked "seat" permits the gasoline to pass from the left hand inlet to the righthand outlet?

A. Yes.

Q. And what you call the valve seat fits in the plug?

A. Yes.

Q. And the angle on the seat is about 40 degrees?

A. Yes.

Mr. Underwood:

I offer the diagram in evidence.

Mr. Matteson:

No objection.

The Court:

Let it be admitted.

(The diagram above referred to was marked Respondent's Exhibit "C".)

(By Mr. Underwood):

Q. Captain, the seat in the plug is of metal?

A. Yes.

Q. That is what you call a ground seat valve?

A. Yes, sir.

Q. Now, you spoke, Captain, of the time in 1929 when the Seminole was in Port Washington. You said that it was for the use of the Phipps' family?

A. Yes, sir.

Q. What members of the Phipps' family do you recall using the boat?

A. Well, Mrs. Phipps used it two or three times.

Q. Mrs. Henry Phipps?

A. No, Mrs. John Phipps, and the boys were aboard a number of times.

Q. Which boys?

A. Mr. Phipps' boys.

Q. Can you name them?

A. Michael and I think Herbert; I don't recall the other one's name.

Q. Do you remember Mrs. Henry Phipps being aboard?

A. No, sir.

Q. You wouldn't say she wasn't aboard, would you?

A. No, because I don't know; my place was below.

Q. Do you remember Mrs. H. C. Phipps being aboard?

A. No, sir.

Q. Would you say she wasn't aboard?

A. I wouldn't say.

Q. Do you remember Mrs. Guest being aboard?

A. No, sir.

Q. Would you say she wasn't aboard?

A. No, sir. As I told you, my place was below, and I didn't have any business up on deck to see who the guests were.

Q. Is it a fact that you do not know what members of the Phipps' family were using the boat?

A. The only thing I can say is that we went up and followed Mrs. Phipps' family.

Q. Did anybody ever tell you why the boat went up north?

A. For the family to use it.

Q. Did anybody ever tell you?

A. No.

Q. That is a conclusion that you reached in your mind?

A. Yes.

Mr. Underwood:

I move to strike out his evidence as to the reason why the boat went to New York in 1929.

The Court:

Yes, I think as it developed he had certain facts to which he testified, and I think the objection goes to the qualify of the testimony rather than to its competency. I shall deny the motion and consider it in that limited way.

Q. You got your orders from the Captain of the boat?

A. Always, yes.

Q. Do you know who it was that decided to fly the pennant of John S. Phipps at Port Washington?

A. That I could not say; that is up to the Master.

Q. You don't know about that?

A. I had nothing to do with that; no, sir.

Q. What was that penant?

A. It was the penant of Mr. John S. Phipps.

Q. Do you remember the color and the shapes?

A. Black and yellow.

Q. What part was black?

A. I don't know.

Q. Do you remember the shape?

A. Well, it was like this and like that (indicating).

Q. It was a regular pennant with—

A. In other words, it was a square flag with a cut in the end of it.

Q. What part was black and what part was yellow?

A. That I don't know; both of them had the same colors; one was one way and the other was reversed.

Q. Do you remember that H. C. and J. S. Phipps had identical flags except that the colors were reversed?

A. Yes, sir.

Q. One was yellow and black and the other was black and yellow, but you don't remember which was which?

A. I don't remember which was which; no, sir.

The Court: *

In getting back to your objection, I think the independent facts that the witness testified to should remain in the record, and I think the conclusion that he did reach technically is incorrect, so I shall reverse my ruling on that and let it remain in the record. I think the record will be freer of error if technically the motion is sustained, simply striking the conclusion.

Mr. Matteson:

I take it that this is simply a general statement and we will have to go over the record and find out what in particular is objectionable?

The Court:

Yes. He testified to independent facts in regard to flying the Phipps' flag, and also testified what members of the Phipps' family used the boat. That certainly should remain in the record.

(By Mr. Underwood):

Q. How many boats have you been the Captain on since you left?

A. That is hard to say.

Q. A good many?

- A. A good many, yes.
- Q. How clear is your recollection about these gasoline tanks?
- A. How clear?
- Q. Yes.
- A. What do you mean by that?
- Q. Your recollection about their construction.
- A. They were steel tanks; they were round and they were setting upright.
- Q. How were they fastened?
- A. They were fastened by brackets.
- Q. Securely to the bulkhead?
- A. Yes.
- Q. Securely?
- A. That I won't admit.
- Q. Do you remember?
- A. No, I don't.
- Q. You don't remember?
- A. No, sir; I never had occasion to crawl up in there to find out.
- Q. Now these pans that were under the tank, how many were there?
- A. One.
- Q. Are you sure about that?
- A. One large pan.
- Q. Your recollection is quite clear about that?
- A. To my recollection there was only one pan. I know I was in there a dozen of times to mop it out.
- Q. You say they didn't drain overboard?
- A. No, sir; I never found any drain overboard.

Mr. Underwood:

Will you mark this paper for identification?

(Paper marked Respondents' Exhibit "D" for identification.)

(By Mr. Underwood):

Q. Captain, I show you Respondents' Exhibit D for identification and ask you if the sketch at the bottom refreshes your recollection as to the construction of those drain pans, and whether or not they drained overboard. I want you to look at that—

Mr. Botts:

Let me see that.

Mr. Underwood:

Just a moment.

Mr. Botts:

You have no right to cross examine the witness until you show it to me.

A. This is where the tanks were (indicating).

Mr. Botts:

I object to him questioning the witness about a diagram which is not in evidence.

Mr. Underwood:

I am asking him first to refresh his recollection. If it refreshes his recollection about a particular thing and he says, "yes", I think if I go further that possibly Mr. Botts is correct.

The Court:

I think counsel is entitled to view it.

Mr. Underwood:

At this point?

Mr. Botts:

At any point before the witness is questioned about it.

Q. Now, Captain, do you notice the legend here "tanks standing in drip pans and leading overboard." Do you notice that?

A. I do.

Q. Does that refresh your recollection as to how these pans drained?

A. No, it doesn't; I never found any drains—

Q. You never saw the drains?

A. No, sir.

Q. And your recollection today is that there was but one tank?

A. No, there was four tanks.

Q. I am sorry; I meant "pan".

A. One pan, that is right.

Q. Captain, this glass gauge—there is one thing I didn't quite understand about this glass gauge. You say it was inside of a pipe?

A. It was in a tube.

Q. It was inside of a brass tube?

A. Brass pipe.

Q. With a slit cut in it?

A. With a slit cut all the way down.

Q. Do you remember what sort of a connection there was between the pipe, the gasoline line and the glass gauge?

A. There was some nipples and elbow on the valve.

Q. This wooden floor of the engineroom was made up in small sections, wasn't it?

A. Yes, sir.

Q. Perhaps two feet by two?

A. No; some of them were larger.

Q. But small and easily manageable sections?

A. Yes.

Q. With a single hole?

A. Yes.

Q. Where you could pull them up?

A. Yes.

Q. Do you remember the pasageway that led along-side the engineroom on the starboard side?

A. Yes.

Q. There wasn't any floor covering in the bilge there, was there?

A. No, sir.

Q. Completely open?

A. Yes, that is, under that passageway floor.

Q. Under the passageway floor?

A. Yes.

Q. There wasn't any particular bulkhead between the bottom of that passageway and the engineroom floor, was there?

A. No, it was all open.

Q. You could stand in the engineroom and look right in there and by leaning down, and with a little crawling, you could get right in there?

A. Yes.

Q. There was a number of pipes there?

A. Yes, water pipes.

Q. Plainly open to view?

A. Yes, sir.

Q. You have spoken about cowl ventilators. Isn't it a fact that there were two cowl ventilators that led down into the engineroom, one on each side?

A. I won't be sure, but I think you are right; I remember one distinctly.

Q. You do not deny that there were two?

A. No, sir.

Q. And there was a skylight above the engineroom?

A. Yes, sir.

Q. Which of course could be opened to allow air pass through?

A. Yes, sir.

Q. Just how sure are you that these were Schebler carburetors?

A. I won't be sure because I have handled quite a number of engines; some of them had Schebler's and some different makes.

Q. You might be mistaken about that?

A. I might be mistaken on the make.

Q. Now I am going to ask you the same question about this trap or strainer, Exhibit 17. Just how sure are you that on the Seminole, when you were aboard her, the traps were larger and of different type?

A. I am positive.

Q. You are positive of that?

A. Absolutely; they were larger than that.

Q. You are absolutely certain that when you were on the Seminole Exhibit 17 doesn't represent the type of trap you had?

A. I am sure of it.

Q. About these Jenkins valves. As I understand it, you say that there were Jenkins valves of the type that you have indicated to me on a handsome sketch at each tank?

A. One at each tank.

Q. And that there were two drain valves to each Jenkins valve?

A. Yes.

Q. How clear is your recollection about that?

A. I am positive about that.

Q. You are positive about that?

A. Yes; this was in 1929, and I don't know what things happened after I left.

Q. But in 1929 you are positive that that was the type?

A. Yes.

Q. When the boat was in operation I take it you had occasion frequently to enter this space under the gasoline tanks?

A. Quite a number of times.

Q. You kept fittings under there?

A. Fittings and the outboard motors.

Q. What did you keep in the bilge of the boat?

A. Nothing.

Q. Nothing at all?

A. The only thing in the bilges would be the fresh water tanks.

Q. Captain, you said something about this line, Exhibit 2.

A. Yes, I said that that possibly might have been the feedline to the little auxiliary generator.

Q. Now do you notice that the pipe which is attached to Exhibit 17 is the same size as the pipe attached to Exhibit 2?

A. Yes, sir.

Q. Is it possible that the trap on Exhibit 17 was the trap on the line to the auxiliary?

A. If I remember right, which I won't be positive now, I think that there was a trap on the auxiliary.

Q. But you are not sure?

A. No, sir.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Botts:

Q. Captain, I want to ask you about this gauge just a little bit more: as I understand it, this gauge was enclosed within a slit copper tube?

A. No; brass tube.

Q. Brass tube?

A. Yes.

Q. That was merely for the purpose of protecting it against accidental breakage?

A. Yes.

Q. And the slit was made in it so you could look in there and see the head of the gasoline?

A. Yes.

Q. You could adjust those so as to get the amount of gasoline in each tank separately?

A. Yes.

Q. There was a cut-off valve at the bottom of this gauge, I take it?

A. Yes.

Q. Which connected to each tank?

A. Yes.

Q. Now ordinarily when the boat was in operation did you leave the gauge so that the gasoline shut off the amount standing in some particular tank, or did you keep it cut off until you wanted to—

Mr. Underwood:

I object to what he did in 1929.

The Court:

I think that is correct. The objection is sustained.

(By Mr. Botts):

Q. This pan that has been mentioned underneath the gas tanks. I will ask you to describe that pan a little bit more; what was it made of?

A. The main part of it was wood, of course; it had a piece around it, about that high (indicating), all the way around it, and there was a lead cover at the bottom.

Q. It was a wooden frame sheathed in lead?

A. Yes.

Q. It was a solid pan that wouldn't leak?

A. Yes.

Q. Lead sheathed the whole thing?

A. Yes.

Q. The tanks themselves rested on this lead or did they rest on the wooden—

A. They rested on a piece of wood.

Q. There was a piece of wood placed on top of the lead and upon that wooden platform or frame the tanks rested on?

A. Yes.

Q. You stated you went in there dozens of times and mopped out that pan?

A. Yes; just water; just water condensation, and that stuff.

Q. Did you ever mop any gasoline out of that pan?

A. No, sir.

Mr. Botts:

That is all.

By Mr. Matteson:

Q. This survey report, Respondents' Exhibit "D" for identification, shown to you by Mr. Underwood, is signed by Fred H. Nelson, Master; do you know who he was?

A. Yes, I remember him very well.

Q. Who was he?

A. He was a Swede.

Q. What connection did he have with the Seminole, if you know?

A. He used to be Master of it.

Q. What sort of fuel did they use for cooking appliances on the Seminole?

A. Kerosene. That was in 1929. I don't what they used then. In other words, it was a coal stove which had been converted to use an Oliver burner.

Q. Using gasoline?

A. Kerosene.

Q. Were there some water-tight bulkheads on the Seminole?

A. Yes.

Q. Where were they located?

A. One forward of the gas tanks.

Q. They were water-tight bulkheads?

A. Yes.

Q. How about the bulkhead that separated the tank compartment from the engineroom?

A. That was a steel bulkhead and there was a hole in it, the hole that I told you I had to crawl through.

Q. Did it go straight to the skin of the ship?

A. It went down to the bottom, yes.

Q. What size brass pipe would you call this Exhibit 2?

A. One-quarter inch.

Q. Now I wish you would look at this Exhibit "D" for identification, down here in the middle, and see if that refreshes your recollection as to the size of the feed-lines from the tanks.

A. It is one-quarter inch brass pipe.

Mr. Underwood:

Is that what you read from the paper?

The Witness:

Yes, that is what I read from this.

(By Mr. Matteson):

Q. Does that refresh your recollection about that?

A. No; there was a three-eighth inch in there then.

Q. As you recall, Captain, it was three-eighths?

A. It was three-eighths reduced down to one-quarter to the carburettor.

Q. Now with respect to this diagram, Respondents' Exhibit "D", there is one thing that I do not get clear: I understood you to say that there was a plug in the bottom of the valve that you took out and then you removed the seat with a screw-driver, is that right?

A. Yes, I replaced it with a new seat and put that plug back in there.

Q. What do you call the seat?

A. I will show you. Here is the seat here (indicating). There is a seat here and one here (indicating). You raise your valve until you open that hole.

Q. I want to know whether there are three pieces here or two pieces?

A. Two pieces.

Q. Well the plug is the thing that the seat fits against?

A. Yes, the seat on the plug.

Q. And the plug comes out with a screwdriver?

A. No.

Q. How do you take that out?

A. With a big wrench.

Q. Did these tanks pretty well fill the tank space?

A. Yes.

Q. And the only way you could get at them was from underneath?

A. Yes, and it took a small man to get in there at that.

Q. Was there much facility for examining the tanks or seeing what was in the tank compartment?

A. Certainly you could examine it.

Q. You would have to get in this underneath space to do it?

A. Yes.

Q. And look up around the edges of the tray?

A. Yes.

Q. How would you see; would there be any light in there?

A. Carry an extension light in there with you.

Q. An extension light?

A. Yes.

Q. Or a flashlight?

A. You could use a flashlight either.

Q. You could use an extension light in there?

A. I have used an extension light in there.

Q. And all you could see would be what you could see by looking from the bottom up.

Mr. Underwood:

I object to this; this is his witness.

The Court:

Don't lead the witness.

Mr. Matteson:

That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. Could you tell with reasonable ease whether the tanks leaked?

A. There wasn't a drop of gasoline that leaked out of them all of the time I saw them.

Q. When you looked through the hole could you tell whether or not they leaked by looking at the pan?

A. Certainly.

Q. Was there anything difficult about that?

A. No. If any spilled you could have smelled it.

Q. Did any of the gasoline fixtures leak?

A. No, sir.

Mr. Underwood.

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. How deep was the tray?

A. I would say about six inches.

Mr. Matteson:

I have no further questions.

Mr. Botts:

Day before yesterday counsel served on me notice to produce some letters. They are letters sent to Captain Pilkington, and Captain Pilkington gave me what purported to be all of his correspondence previous to this, but I had him make another search on yesterday to be sure; we have here documents and records numbered 2, 3, 5, 6, and 7. We have no record of ever having received documents numbered 1, 4 and 8. These are all we have, and we will leave them with the clerk here pursuant to the notice.

Mr. Underwood:

Are you offering those in evidence?

Mr. Botts:

No. You served notice to produce them.

(Witness excused.)

473 Thereupon, ELLIOTT BRYANT, was produced as a witness by the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Your name is Elliott Bryant?

A. Yes, sir.

Q. Are you the son of Mr. Bryant who testified here yesterday?

A. Yes.

Q. What is your occupation?

A. Captain on a boat.

Q. What boat are you on now?

A. I am on the boat Skow, 38-foot fishing boat.

Q. Where is that located?

A. Palm Beach.

Q. You came here under a subpoena, did you?

A. Yes, sir.

Q. Did you ever work on the Seminole?

A. Yes, sir.

Q. Well, will you tell us when and how long you worked on the Seminole?

A. I went on it first in 1929 as messman, and I worked on it off and on for about six years.

Q. When you say "off and on", you mean the Seminole was sometimes out of condition?

A. Yes, sir. And at other times I was on other boats.

Q. Did you work as messman during all of that time or sometimes in other capacities?

A. No, sir; I was a sailor on deck practically the whole time, outside of the first three months.

Q. Were you on the Seminole in 1935?

A. If that was the last time she was out I was.

Q. That was the year of the fire?

A. Yes.

Q. Were you on her then?

A. I was on her the whole of the last trip.

Q. Were you on her when she came from Fort Lauderdale?

A. To Miami?

Q. Yes.

A. Yes.

Q. Were you on her while she was in Miami?

A. Yes, sir.

Q. You spoke something about a trip. Will you tell us what that trip was that she made?

A. Well, we left Miami and went down to the Keys, Matecumbe and from there to No Name Key and over to Sawyer Key, and then the trip back over practically the same route.

Q. Do you remember the date of the trip?

A. No, sir.

Q. Can you tell us who made the trip?

A. I couldn't tell you all of the party; Mr. Phipps was along but I can't remember who else was in the party.

Q. When you say Mr. Phipps do you mean Mr. John S. Phipps?

A. That is right.

Q. Whose party was it, do you know?

A. No.

Mr. Underwood:

I object to that. Calls for a conclusion.

The Court:

I think it calls for the conclusion of the witness; the objection is sustained.

Q. Was there any other Mr. Phipps on board besides Mr. John S. Phipps?

A. I am not sure, sir.

Q. You know that Mr. John S. Phipps was on board?

A. Yes, sir.

Q. Do you know Mr. H. C. Phipps?

A. Yes, sir.

Q. Was he on board?

A. Not on that trip, sir.

Mr. Court:

Speak louder, Mr. Witness.

Q. Do you know what flag the Seminole flew on that trip?

A. No, I couldn't definitely say that.

Q. Do you know what flag she carried?

A. We had two flags on board, sir; Mr. John S. Phipps' flag and Mr. H. C. Phipps' flag, and they were both identi-

cal in color, but the colors were reversed, so I wouldn't know which flag was flying at the time.

Q. Do you know what date you got back to Miami?

A. No, sir.

Q. Where did the guests leave the yacht?

A. I don't remember, sir.

Q. When you got back to Miami do you remember how long the boat was here then?

A. No, sir.

Q. When or where did she go after the time it returned to Miami?

A. Well, there was one period of time that we laid in Miami; whether it was before or after the trip I don't know, but from Miami it went directly to Fort Lauderdale.

Q. Did you go with her?

A. Yes, sir.

Q. Who was on the boat on the trip from Miami to Lauderdale?

A. Captain Baker, Rawleigh Schlappi and the cook's first name was Toni; I don't remember his last name, and the others I can't remember; there were a couple more of them but I can't remember their names.

Q. Was Captain Baker's son on that trip?

A. I can't remember whether he went up with us or not.

Q. Did you make any stops on the way to Fort Lauderdale?

A. We stopped the boat for lunch at the mouth of the River;

Q. At the mouth of what river?

A. New River at Fort Lauderdale; we had lunch and then proceeded right on up to the Yard.

Q. When you say you stopped the boat, what do you mean?

A. We ran the boat into one of the little creeks that are just outside of the mouth of the River; just put her

nose up on the bank, and then proceeded right up the River.

Q. Were the engines stopped?

A. No, sir.

Q. The engines were kept running?

A. Yes, sir.

Q. While you had your lunch?

A. Yes, sir.

Q. How long were you laying there like that?

A. About 15 minutes.

Q. Then you continued to Fort Lauderdale?

A. Yes, sir.

Q. And continued on to Pilkington's yard?

A. Yes, sir.

Q. Who were on board when you arrived at Pilkington's?

A. The whole crew was on board that left Miami.

Q. What time did you get there?

A. Right about two o'clock I believe.

Q. What did you do after you got there?

A. Well, there was a little cleaning up to do and we worked on the boat. Now I don't remember how much we did, because that was all four years ago.

Q. What time did you leave?

A. About five of five-thirty, something like that, sir.

Q. Was it as late as that?

A. It was right around there, sir.

Q. Do you have any distinct recollection about what time you left?

A. No, sir.

Q. Did you have anything to do with the engineroom?

A. No, sir.

Q. Do you know whether there was a drain valve in the engineroom for drawing off gasoline?

A. Yes, there was.

Q. Do you know what use was made of it on the Semincle?

A. No, sir.

Q. Did everybody leave the Seminole at the same time?

A. I don't remember, sir.

Q. Did the engineer leave at the same time you did?

A. Yes, I drove him back.

Q. That was Schlappi?

A. Yes, sir.

Q. Where does he live?

A. He lives in West Palm Beach.

Q. Did he go back there with you?

A. Yes, sir.

Q. That is where your home is too?

A. Yes, sir.

Mr. Matteson:

That is all.

Mr. Botts:

I don't think I have any questions at this time.

Cross Examination.

By Mr. Underwood:

Q. Before you joined the Seminole in the early part of 1935 do you remember going down to the office of the Palm Beach Company and asking Jim Riley whether he had a job for you?

A. Yes, I have been to the office several times in the past six or eight years.

Q. And do you remember that it was that time that Riley said he had a job for you and said, "I am going to send the Seminole down to Miami"?

A. I don't remember that, sir.

Q. I am sorry I can't hear you.

A. I said I didn't remember that, sir.

Q. Do you remember how you came to join the Seminole on that occasion?

A. No, sir.

Q. You got paid by the Captain of the boat, did you?

A. Yes, sir.

Q. The Captain of the boat supervised your work, did he?

A. That's right.

Q. After the Seminole got down to Miami you did some work on her, didn't you?

A. Yes, sir.

Q. You were down in the bilges?

A. Yes, sir.

Q. Tell us what you did in the bilges?

A. Red-leading.

Q. How much of the bilge did you cover?

A. All of the bilge aft of her engineroom.

Q. From the after engine room bulkhead to the stern of the boat?

A. Yes, sir.

Q. Were the bilges dry?

A. Yes, sir.

Q. Clean?

A. Yes.

Q. Were they sweet-smelling?

A. They were the cleanest bilges I found on any boat.

Q. When you left the boat at Pilkington's after the cruise were the bilges left the same way?

A. Yes, sir; they never leaked.

Q. Did you ever smell any gasoline in the bilges of the Seminole?

A. No, sir.

Q. Mrs. Guest was aboard on that cruise, was she?

A. I believe so.

Q. Captain Stark's boat accompanied you, did it not?

A. Yes, sir.

Q. And Mr. Herbert Phipps was aboard, was he not?

A. On Captain Stark's boat?

Q. Yes.

A. Yes.

Q. And the Clip was along?

A. Yes, sir.

Q. That is Mr. J. S. Phipps' boat as far as you know?

A. Yes, sir.

Q. Abel was in charge of the Clip on that cruise, wasn't he?

A. Yes, sir.

Q. And not the Seminole?

A. No, sir, Captain Abel never had charge of the Seminole.

Q. Billy Baker was captain of the Seminole on that cruise?

A. Right.

Q. Don't you remember that the guests left the boat at Lower Matecumbe?

A. I don't remember much about the people leaving on that trip, sir.

Q. When you got to Miami do you remember when the servants left the boat at Miami?

A. I can't remember.

Q. Do you remember that it was foggy that day?

A. No, sir.

Q. Do you remember coming into Miami and tying up at the Royal Palm Dock?

A. I remember coming in and tying up, yes.

Q. Your memory is foggy?

A. That's right.

Q. The only people that you remember distinctly going from Miami to Fort Lauderdale on the yacht to lay her up was Captain Baker, Schlappi, the engineer, Toni, the cook, and yourself?

A. Yes, sir.

Q. You had no part in preparing the engineroom for her lay-up?

A. No, sir.

Q. Your work was on deck?

A. On deck, yes.

Q. Now you were asked about stopping in the river for lunch.

A. Yes, sir.

Q. Do you remember any conversation between Captain Baker and Schlappi about that time?

A. I remember them talking about the gasoline supply being low and that they thought they were going to run out.

Q. Do you remember anything more of that conversation?

A. No, sir.

Q. Just that much?

A. That's right.

Q. Is your memory clear that the motors were allowed to run while you had your lunch that day?

A. Yes, because we put her nose up on this bank and the motor was running slow to hold the nose on the bank instead of dropping an anchor.

Q. This conversation between Baker and Schlappi about the gasoline supply being low occurred about lunch time?

A. Yes, sir.

Q. And where was the boat then; just at the mouth of the River?

A. Yes, sir.

Q. Had you passed through any of the bridges?

A. Not going up the river.

Q. You were in New River?

A. Just before you get to New River there are a lot of little canals that run in from the inland waterways, and it was the first little canal before you get into the River, possibly 75 yards from New River.

The Court:

That conversation was between—

Mr. Underwood:

The Master and the Engineer, your Honor.

(By Mr. Underwood):

Q. While you were on the Seminole prior to the cruise in 1935 did she go up to Cocanut Grove, the repair yard?

A. Yes.

Q. Was she hauled out?.

A. Yes.

Q. Was she surveyed?

A. She was surveyed at the Royal Palm Dock before we went down there.

Q. Who made that survey?

A. Mr. Bernard.

Q. What did you see him do?

A. He inspected every part of the boat, in the bilges, up forward and through every section of the boat; he made a list of the motors, where they were located, the feed-lines and how everything was, and then he went off the boat and lost his records and he came back about three hours later when he went over the boat the second time, making a complete investigation the second time.

Mr. Matteson:

Of course this is not cross-examination. It is not with respect to anything that we have dealt with at all.

The Court:

I think the objection is well taken.

Mr. Underwood:

For the convenience of the witness may I be permitted to go ahead with the subject?

The Court:

Make him your own witness?

Mr. Underwood:

Yes.

The Court:

Let the question and answer stand for that purpose.

Mr. Matteson:

No objection.

(By Mr. Underwood):

Q. Where were you when Mr. Bernard was going through the boat?

A. I was with him.

Q. All of the time?

A. Yes, sir.

Q. Did you go through all of the bilges?

A. Yes, sir.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Did you ever discuss your testimony with Mr. Underwood or any attorney for the other side before you took the stand?

A. Mr. Underwood saw me just once; I only saw him once in my life.

Q. When was that?

A. About three days ago.

Q. That was since you received your subpoena to attend as a witness in this case?

A. Yes.

Q. Where did you have that conversation with him?

A. In West Palm Beach.

Q. Did you discuss this matter of Mr. Bernard, the surveyor, with him at that time?

A. I told him about it but I didn't discuss it.

Mr. Matteson:

That is all.

Mr. Underwood:

That is all.

(Witness excused.)

488 Thereupon: GEORGE P. PILKINGTON was produced as a witness in behalf of Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Your name is—

Mr. Underwood:

Of course I will object to anything in the nature of cross-examination of this witness by Mr. Botts.

Mr. Botts:

I think we will concede that in the circumstances that would be a fair request, and I will govern myself accordingly.

(By Mr. Matteson):

Q. What is your full name, Captain?

A. George J. Pilkington.

Q. You are the proprietor of Pilkington's Shipyard at Fort Lauderdale, Florida.

A. Yes, sir.

Q. You had a fire there in 1935, did you?

A. Yes, sir.

Q. About how many boats were stored in your shed at that time?

A. Somewhere in the neighborhood of 150. What I mean to say is 62 that year.

Q. 62 that year?

A. Yes, sir.

Q. Where were you when the fire started?

A. I was about 20 feet off the boat.

Q. Where was that?

A. Under the shed.

Q. Where did the fire start?

A. When the explosion happened I was getting in my small boat about 20 feet off the Seminole.

Q. On what boat was the explosion?

A. The Seminole.

Q. Now what happened when the explosion took place?

A. It blew up and tore up—not only tore all of the front of the Seminole off but it blew half of the cabin off of the boat next to it, the boat called the Flamingo; it blew off half of the cabin of Mr. McCoy's boat, and another lady had a boat there pretty close to it and it blew half of the cabin off of that.

Q. Was Mr. McCoy's boat the Blue Lagoon?

A. It blew half of the cabin off and when the fire started, when it started to burn, I run down the platform and took the lines off to take it away, but the fire was so great and the heat was so great I had to stop.

Q. What did you do then?

A. I didn't do anything; I couldn't do anything.

Q. Did the Fire Department come?

A. It came in about five minutes afterwards.

Q. What did they do?

A. They threw water over onto the Seminole, did the best they could but they couldn't do anything.

Q. Were any of the boats in the shed saved?

A. Partly one, a little one.

Q. Which one was that?

A. It was the 24-foot one where the roof fell down on top of it.

Q. Do you remember the name of that one?

A. It belonged to a Mr. Hennessy.

Q. Were all of the other boats burned up?

A. Yes; not all of them; there were a couple out in the front of the building where the wind was blowing from the east to the west, and those boats out there were saved.

Q. What happened to the shed?

A. The shed all went down.

Q. Did you lose any boats in the fire?

A. I did; I lost mine; it was right inside of the door; it was a 42-foot boat and I couldn't get it out because the heat was so great.

Q. Did you lose any other boat besides that one?

A. I lost two barges, a small barge and a large barge.

Q. How long had the Seminole been stored there; how long had she been coming there?

A. In the neighborhood of seven or eight years.

Q. When did she come there?

A. She came there, I think, about the 11th of June, 1928, somewheres around there.

Q. Who made the arrangements for her to come there at that time?

A. Mr. Simmon, down at the Boulevard Mortgage Company.

Q. In Miami?

A. Yes.

Q. How did he get in touch with you?

A. Phoned me.

Q. Just tell us what took place; what the arrangement consisted of?

A. Mr. Simmon called me up and—

Mr. Underwood:

Just a minute. I object to that question on the ground that there is no connection shown and no foundation laid to show any connection between Mr. Simmon and the respondent Phipps, and on the ground that it is too remote in point of time, and on the further ground that the record already shows the ownership of the boat had changed between the time of any alleged agreement in June, 1928 and the time of the fire.

Mr. Matteson:

I think that by the time the witness' testimony is finished the connection will be perfectly clear, and I ask that it be taken subject to being connected up.

The Court:

All right.

Mr. Underwood:

I stated in my objection another ground, namely, that it is too remote. Here is a conversation that purports to have taken place in 1928, in the month of June, at a time when, according to the evidence introduced by the respondents (Libelants) the vessel was registered in the name of J. S. Phipps; they have also offered in evidence Certificate of Registry which shows that subsequent to this conversation the ship was registered in the name of the Seminole Boat Company; secondly, even if it be assumed that Mr. Simmon represented Mr. Phipps, there is no connection between that contract and any contract that might have been made with the Seminole Boat Company subsequently.

The Court:

I think we had better view it as a whole. Subject to it being properly connected up, I will overrule the objection.

(By Mr. Matteson):

Q. I think you said, Captain Pilkington, that Mr. Simmon was connected with the Boulevard Mortgage Company. Was that the Biscayne Boulevard Company; is that what you mean?

A. I don't know exactly the name it went under, but I think it was the Boulevard Mortgage Company.

Q. Now just tell us what took place when Mr. Simmons called up and arranged for the storage of this boat, what he said to you and what you said to him?

A. He called me up and wanted to know if I could take care of a 110-foot boat, and I told him yes, and I asked him who the boat belonged to, as I have to take the name of the owner and the name of the Captain before I will take a boat, and he told me it belonged to John S. Phipps, and I asked him who the Captain was, and he said that it didn't have a captain right at that time, as they had let their captain go, but that somebody would bring it up if they decided to bring it up there.

Q. Now what was said about the arrangements for storage?

A. Mr. Simmon told me to send the bills, which was \$75 a month, for the Seminole up to him at the "Biscayne" (or whatever it is) Boulevard Company; Boulevard Mortgage Company I think it was at that time.

Q. Did you tell him anything about—

Mr. Underwood:

I object to him leading the witness. Let him ask what the conversation was. I don't think we ought to have Mr. Matteson suggesting topics to the witness. He is an intelligent person.

The Court:

I have not heard the entire question. Mr. Matteson has not completed his question.

(By Mr. Matteson).

Q. I will rephrase it: was or was not anything said about what was necessary to put the boat in storage there?

A. I told him that the owners laid their own boats up, which was the custom everywhere; that I didn't have nothing to do with laying any boat up whatever; that I charged for storage, and if I turned the engines over or kept the water out of the boats or cleaned them, that I never made any charge for it.

Q. Was that part of this conversation with Mr. Simon; did you tell that to Mr. Simon?

A. Yes.

Q. Was the boat afterwards sent there?

A. Yes.

Q. When was that?

A. That was about the eleventh—somewheres around the 11th of June, 1928.

Q. And from that time until the time of the fire was she stored there at different times all through that period?

A. Yes, sir.

Q. From that time until the time of the fire did anyone tell you of any change in the ownership of the Seminole?

A. No, sir.

The Court:

We will take a recess until two o'clock.

(Recess.)

March 16, 1939—2:00 P. M.

GEORGE J. PILKINGTON, a witness produced in behalf of the Libelants, resumed the stand and was examined and testified further as follows:

Direct Examination (Cont'd).

By Mr. Matteson:

Q. Captain, this morning you had finished telling me about the arrangement with Mr. Simmon, the arrangement made by Mr. Simmon, with you for storing the Seminole. Now after that arrangement, Captain, did he arrange for the storage of any other boats there?

A. Yes.

Mr. Underwood:

I object to what he did about any other boats, if your Honor please.

The Court:

What is the materiality of that?

Mr. Matteson:

If your Honor please, I think that the network relations between Mr. Phipps and his representatives and Captain Pilkington is highly important; they all dovetail in together and show a complete picture. Incidentally, your Honor, it will show that boats admittedly personally owned by Mr. Phipps were dealt with in the same manner and through the same channels that the Seminole was handled; so I think that when we piece it all together you will have a complete picture that will be very significant.

The Court:

Subject to that being shown, the objection is overruled.

(By Mr. Matteson):

Q. The question was about any other boats that Mr. Simmon arranged to store with you?

A. He arranged to store the Iolanthe and Mr. Phipps' fishing boat, and the boat called the Dorthea that belonged to his sister, Mrs. Guest.

Q. Did the fishing boat have a name?

A. I don't remember; I went by the number.

Q. Did Mr. Simmon tell you whose boat the Iolanthe was?

Mr. Underwood:

If your Honor please, may all such questions be taken subject to my objection on two grounds: one, that the Iolanthe is immaterial, and the other ground that there is no proof in the record yet to connect Simmon with the respondent Phipps.

The Court:

Yes. To this line of questioning these objections may be considered as having been made.

(By Mr. Matteson):

Q. The question was, Captain Pilkington, what, if anything, Mr. Simmon told you about the ownership of the Iolanthe?

A. He told me it belonged to John S. Phipps.

Q. What about the fishing boat?

A. That that belonged to him too.

Q. How do you know that?

A. Because we entered it on the books as Mr. Phipps' boat.

Q. I mean who told you that?

A. Mr. Simmon.

Q. Now was there afterwards someone appointed to look after those boats?

A. Yes.

Q. Who was that?

A. Mr. Riley.

Q. Before Mr. Riley was there someone else?

A. Just Mr. Simmon, and Mr. Huff was appointed later and afterwards withdrawn; he was withdrawn and Mr. Riley was appointed in his stead.

Q. I show you this letter. Do you remember that letter?

A. Yes, sir.

Q. Did you receive that letter from Mr. Simmon whose name is signed to it?

A. Yes, sir.

Q. And this says "Mr. Huff is appointed to have complete charge of our boats", is that right?

A. That is right.

Q. What boats did that refer to?

A. All of them.

Q. All of those you mentioned?

A. Yes, sir.

Mr. Underwood:

I object to this witness stating what the letter says the boats referred to were. The letter is the best evidence. Is Mr. Matteson going to offer it?

Mr. Matteson:

Yes.

The Court:

I think technically the objection is well taken, Mr. Matteson. You can ask him what boats he had in his charge at that time.

Mr. Matteson:

I think it speaks for itself, as a matter of fact. I will offer this letter in evidence if I may.

The Court:

Any objection?

Mr. Underwood:

Mr. Matteson agrees that he is not offering the pencil notations on the letter, and with that agreement I have no objection to the letter going in.

The Court:

Let it be admitted.

(Letter dated February 11, 1929, signed A. A. Simmon above referred to was marked Libelants' Exhibit 38.)

Q. At the time you received that letter what boats did you have that Mr. Simmon had arranged to store with you?

A. I don't remember all of them, but the Seminole and the Iolanthe and Mr. Phipps' fishing boat, and sometimes Mrs. Guest came in off and on and went out.

Q. Who arranged with you the storage of Mrs. Guest's boat?

A. The same—I think it was Mr. Simmon.

Q. Now I show you this letter, Captain Pilkington, and ask you if you remember that one?

A. Yes, I remember that one.

Q. And this letter is signed by Van E. Huff?

A. By Huff.

Q. Is he the man that you referred to?

A. Yes, sir.

Mr. Matteson:

I offer this letter in evidence.

Mr. Underwood:

I have no objection.

The Court:

Let it be admitted.

(Thereupon letter dated April 2, 1929, signed by Van E. Huff, above referred to, was marked Libelant's Exhibit 39.)

Q. Can you tell us Captain Pilkington, about this letter; what were the circumstances of that communication?

A. After I had received this letter, a few days after I received it, Mr. Phipps brought a man in there and introduced him to me as Mr. Riley as his secretary, and also of the Palm Beach Co.

Q. Are you referring to Mr. John S. Phipps?

A. Yes, Mr. John S. Phipps.

Q. Now tell me all that Mr. John S. Phipps said to you at that time.

A. Well I went up to Mr. Phipps when he came in, as I generally do in meeting people, and he says, "Captain, this is Mr. Riley, my private secretary, and also of the Palm Beach Company." He said, "You need not bother taking any business up with me whatever"; he says, "I want you to do all of that business through Mr. Riley".

Q. Now did he say anything further than that?

A. Well not at that time that I can remember.

Q. Did he say anything about what Mr. Riley was to do?

A. He told me that Mr. Riley would come down there once a month regularly and look the boats over, that the boats would be in his care, that he would have charge of all of them.

Q. Did Mr. John S. Phipps come to your yard on any other occasions?

A. He came there several times.

Q. Tell me what you remember about Mr. John S. Phipps coming there.

A. Well he and his wife came there one time and went on the Seminole and looked the "boats" over and they came off and said they looked very nice, and I asked him if Mr. Riley would be down, and he says, "Sure, he will be down the first of the month regularly".

Q. Did Mr. Riley come every month while the boats were there?

A. Yes, he came every month.

Q. Now what boats were in your custody at this time that Mr. Phipps introduced Mr. Riley to you?

A. The Seminole and the Iolanthe.

Q. Now did you have any discussions at any time with Mr. Phipps about matters relating to these boats?

A. Only when he came down there this time when he introduced me to Mr. Riley.

Q. I show you this copy of a letter; can you tell me about that; tell me what that is? Just what is that?

A. That was after I had given the customers—

The Court:

Captain, don't tell what is in the letter. Just tell what it is; is it a copy of a letter or is it an original, and from whom to whom?

A. This was after I reduced the price—

The Court:

Wait a minute. Tell us what it is; is it a copy of a letter you wrote or a copy of a letter you received?

A. I don't understand you.

(By Mr. Matteson):

Q. The Judge is asking you whether this is a copy of a letter that you wrote or—

A. Oh, yes, yes; this is a copy of the letter I sent.

Q. To whom was this letter written?

A. To the Palm Beach Company; to Mr. Riley in care of the Palm Beach Company.

The Court:

What is the date of it?

Mr. Matteson:

January 18, 1932.

Q. Will you tell us how you came to write this letter?

Mr. Underwood:

I object to that.

The Court:

I don't think you have laid the foundation yet.

Mr. Matteson:

I will offer the letter in evidence. This is a letter about rates. Have you the original of this letter, Mr. Underwood?

Mr. Underwood:

Yes, I have.

Mr. Matteson:

May we use that instead of the copy?

Mr. Underwood:

Certainly.

Mr. Matteson:

Mr. Underwood has produced the original letter, so instead of marking the copy I will ask to have the original marked.

The Court:

Do you offer that in evidence?

Mr. Matteson:

Yes.

The Court:

Any objection?

Mr. Underwood:

No.

The Court:

Let it be admitted in evidence.

(Letter dated January 18, 1932, above referred to, was marked Libelants' Exhibit 40.)

Mr. Matteson:

The same reservation applies to that letter, that is, there is something written on it that was evidently not a part of the letter itself. I am offering the letter but not the legend on it.

The Court:

It will be so admitted.

Mr. Matteson:

Now, if your Honor please, I don't want to take the time to read this letter to the Captain, but I want to ask him about the subject-matter of it.

The Court:

All right.

Q. Captain Pilkington, this letter seems to be about rates. How did you come to write this letter about rates? Can you tell us about—

A. Rates?

Q. Yes, rates on storage of the Seminole.

A. One year I had written all customers that I was giving a five dollar reduction on their bills, that is, per month, for one year, but that we would go back to the same rates the next year. I don't know whether I got a letter to all of them or not but I got it to a number of them.

Q. Did you have some discussions with respect to rates, some oral discussions with somebody with respect to the rates on the Seminole?

A. Not until after I wrote that letter to the Palm Beach Company or to Mr. Riley.

Q. After you wrote that letter what happened?

A. Mr. Phipps and Mr. Riley came down to the place and told me that our rates for that year was entirely too high.

Q. Who told you that?

A. Mr. Phipps himself. Well, I says, "I can't afford to store that large boat for less than \$2.50 a day; it is impossible", and I says, "I will try to do the best I can for you". Then he says, "If you can't come down in your price I will take her out and take her to Palm Beach and anchor it off of our wharf", and in the meantime I split the difference with him and charged sixty dollars a month.

Q. Was all of that conversation with Mr. Phipps?

A. Yes, with Mr. Phipps alone.

Mr. Underwood:

I object to that as leading, and I suggest that you caution Mr. Matteson—

The Court:—

Yes, that is a crucial part.

Mr. Matteson:

He said the first part of it was with Mr. Phipps and I wanted to find out whether all of it was.

(By Mr. Matteson):

Q. What part did Mr. Riley take in this conversation, if any?

A. Well, after Mr. Phipps said it was too high and that he would take the boat up to Palm Beach and anchor it off of their wharf, Mr. Riley turns to me and says, "Do the best you can, Captain", and that is all Mr. Riley said.

Q. I show you this letter, Captain, and ask you what that is?

A. If I remember right there were several men that I had got for him, for the Captain, when Mr. Phipps was down there one day and he said that he wanted the boat out in a hurry.

Mr. Underwood:

I move to strike out so much of the answer as not responsive to the question.

The Court:

Yes, strike out all of the answer with reference to the contents of the letter.

Q. Is this a letter that you received; is it something you received or sent, Captain?

A. That is after I had sent him—

The Court:

Wait a minute. Is it a letter to you?

A. Yes, sir.

Q. From whom?

A. From Mr. Riley.

Mr. Underwood:

What is the date of it?

Mr. Matteson:

May 18, 1932.

The Court:

Do you offer that letter in evidence?

Mr. Matteson:

I offer the letter in evidence. Is there any objection to this letter?

Mr. Underwood:

No objection.

The Court:

Let it be admitted.

(Thereupon letter dated May 18, 1932, above referred to, was marked Libelants' Exhibit 41.)

Mr. Underwood:

If your Honor please, when I say I have no objection to these things I am, of course, reserving my general objection to anything about Mr. Riley, because he has not been connected with the respondent Phipps. I take it that is so understood.

The Court:

I so understand it.

Q. I show you this paper, Captain, and ask you what it is; is that a letter you received or sent or what is it?

A. That is an explanation of—

Q. Is it a letter which you wrote?

A. Yes, copy of a letter I wrote.

Q. You say that is the reply to this other letter?

A. Yes.

Mr. Matteson:

Have you the original of this letter addressed to Mr. Riley, dated May 20, 1932 which is in answer to this other one, Mr. Underwood?

Mr. Underwood:

I do not have the original of that letter.

Mr. Matteson:

Then I offer the copy in evidence. Do you object to that?

Mr. Underwood:

I have not read it yet.

Mr. Matteson:

I am sorry (hands letter to counsel).

Mr. Underwood:

May I ask Mr. Matteson a question: Do you have the bill that is referred to in the letter of May, 1932—May 18th?

Mr. Matteson:

I don't think so.

Mr. Underwood:

Do you have a copy of it?

Mr. Matteson:

I have never seen it.

Mr. Underwood:

If your Honor please, I find in my files no such letter as of May 20, 1932, and I do not find in the bills any such bill as that referred to in Exhibit 41 or the document now offered, and without the presence of anyone here to tell me that such a letter was received, I am constrained to object to it. I might say that there is nothing in either of these letters to indicate what boat is the subject of discussion, and that is something which motivates me at the moment.

The Court:

If you ask Captain Pilkington if he sent that through the mail and that is the only copy he has, that would then leave us to deal with the question of relevancy.

Mr. Matteson:

This first one that he received has already been marked as Libelants' Exhibit 41, and I am now referring to the copy of his answer.

The Court:

Has the one that he received been admitted yet?

Mr. Matteson:

Yes, your Honor.

The Court:

And now we have the copy. Did he send the original of that through the mails?

Mr. Underwood:

I ask that he not be led on this subject.

(By Mr. Matteson):

Q. Tell me about that letter of which this is a copy; do you know whether it was mailed or not?

A. Yes; I mailed it myself.

The Court:

Now let me see that. You are offering this copy now?

Mr. Matteson:

Yes, sir.

The Court:

Subject to it being connected up, it will be admitted.

(Copy of letter dated May 20, 1932, addressed to J. F. Riley, above referred to, was marked Libelants' Exhibit 42.)

Q. Captain, have you got a copy of the bill that is referred to in these letters?

A. I don't think so.

Q. Now what did that bill have relation to; what was it about?

A. One bill was for the \$35.00 I sent for storage on the boat—\$17.50 for storage on the boat, and the help I paid for and sent the bill to—

Q. What boat was that in relation to?

A. The Seminole.

Q. What were the circumstances; do you remember how it came about?

A. Mr. Phipps was there and he wanted to have it done in a hurry and he thought that the boat looked pretty well, so Captain Bryant had me to get several men to bring there to wash the boat down and help get the boat ready, so I paid the men and sent them the bill for their wages.

Q. You say Mr. Phipps was there?

A. Yes, sir.

Q. What conversation did you have with him at that time?

A. Just about the boat looking so well, and he was in a hurry to get it out; that he only had a few days down here and he wanted to go out and spend all of the time

he could, so that is all I know about that. After he said that I got the men to help the Captain out to get the boat ready.

Q. I show you this copy of a letter. Is that a letter that you received, sent or what is it?

A. This is a copy of a letter that I wrote to Mr. Riley and said that—

Mr. Underwood:

I object to him stating the contents of the letter.

The Court:

Sustained.

Q. It is a letter you wrote to Mr. Riley?

The Court:

Just answer his question, Captain.

A. It is a copy of a letter.

Q. Copy of a letter you wrote Mr. Riley?

A. Yes, copy of the letter.

Mr. Matteson:

Do you have the original of this, Mr. Underwood?

Mr. Underwood:

What is the date?

Mr. Matteson:

March 17, 1933. And here is another one of April 26, 1933.

Mr. Underwood:

Yes, I have the originals of both, March 17, 1933 and April 26, 1933, both addressed to the Palm Beach Company by George J. Pilkington.

(By Mr. Matteson):

Q. I show you this letter dated March 17, 1933, Captain. Is that a letter that you sent to Mr. Riley?

A. Yes, the letter that I wrote to Mr. Riley.

Mr. Matteson:

I offer this letter of March 17th in evidence.

Mr. Underwood:

No objection.

The Court:

Admitted subject to the general objection.

(Letter of March 17, 1933, signed George J. Pilkington, above referred to, was marked Libelants' Exhibit 43.)

Q. How did you come to write this letter, Captain?

A. I made up my mind to give every one that I could five dollars reduction, per month, on their boats, but I don't know if I got a letter to every one or not but I know I got it to quite a number of them.

Q. You sent letters similar to this, to quite a number of your clients?

A. Yes, sir.

Q. What rate did you quote for the Seminole at that time?

A. Well just five dollars off, making it seventy dollars; I was charging seventy-five.

Q. Now here is a letter over a month later, what is that letter, Captain?

A. This is a letter that I wrote and—

The Court:

Don't state what is in it. Is it a letter you received or a letter you wrote?

A. This is a letter I wrote.

Q. To whom did you write it?

A. Mr. Riley.

Mr. Matteson:

Is there any objection to this letter? I offer it in evidence.

Mr. Underwood:

No objection.

The Court:

Let it be admitted in evidence subject to the general objection.

(Letter dated April 26, 1933, addressed to Palm Beach Company, signed George J. Pilkington, above referred to, marked Libelants' Exhibit 44.)

Q. Now does this letter quote a different price for the Seminole, Captain?

A. No, it is just \$600.00.

Q. This letter quotes a price of \$600.00?

A. I made that as an offer to them with the hope that the old rates would—

Q. You quoted them a price of six hundred dollars, expressing the hope that you would return to the old rates when business got better?

A. Yes.

Q. This conversation that you had with Mr. Phipps that you told us about—

Mr. Underwood:

May we have the time of this conversation fixed?

Mr. Matteson:

I am trying to do that now.

Mr. Underwood:

He has mentioned at least two conversations.

Mr. Matteson:

That is right.

Mr. Underwood:

Which one is it.

Q. Captain, I am referring to the conversation you had with Mr. Phipps when you said that Mr. Phipps said that your rates were too high.

Mr. Underwood:

May we have the time and place fixed?

The Court:

Let him fix the time.

Q. Can you tell us, Captain, the date on which you had the conversation with Mr. Phipps in which he said the rates were too high?

A. I don't remember the date.

Q. Can you tell us whether it was before or after this letter?

A. I don't know whether it was before or after; I can't remember the date when he was there, but this letter that was between Mr. Riley and myself—

Q. At the time you had the conversation with Mr. Phipps in which he said the rate was too high, how much were you charging for the Seminole then?

A. \$75.

Q. Was that before you made the five dollar reduction?

A. Yes, sir.

Q. I show you this document, Captain, and ask if you can tell me what that is?

A. Yes, I remember writing—

Q. Tell what it is first, Captain.

A. It is an order for him to get the boat out.

Q. Is it a telegram?

A. I don't know; it must have been a telegram, because my wife copied that off.

Q. That is in your wife's handwriting?

A. Yes, sir.

Mr. Matteson:

I will ask to have this copy of the telegram marked for identification.

(Copy of telegram dated April 30, 1933, to Mr. J. S. Phipps, signed Geo. J. Pilkington, marked Libelants' Exhibit 45 for Identification.)

Mr. Matteson:

Do you have the original of this telegram, Mr. Underwood?

Mr. Underwood:

No, I do not have any such telegram.

Q. I show you this letter, Captain, and ask you what that is; is that a letter you received or sent, or what is it?

A. I received that letter from Mr. Hawkins, with Mr. Phipps' name signed to it, though.

Q. Who is Mr. Hawkins?

A. Mr. Hawkins is in the office of the Boulevard Company.

Q. What dealings had you had with him before this?

A. I never had any dealings with him.

Q. Had you known him down there before?

A. Yes but I never had any dealings with him.

Q. Did you know what his position was down there?

A. No.

Q. Is that the same office that you for a time sent the bills to, Captain?

A. Yes.

Mr. Matteson:

I offer this letter in evidence.

Mr. Underwood:

If your Honor please, I have only the usual objection to this, that there is no connection shown between Mr. Hawkins and the respondent.

The Court:

It is admitted under the same understanding.

(Letter dated March 20, 1934, to Captain George Pilkington, signed Roy H. Hawkins, above referred to, was marked Libelants' Exhibit 46.)

Mr. Matteson:

Will it be conceded that Mr. Hawkins is vice-president of the Biscayne Boulevard Company?

Mr. Underwood:

I don't know whether he is or not. You have him under subpoena.

Mr. Alley:

Did he sign it that way?

Mr. Matteson:

What is that?

Mr. Batchelor:

He asked you, if he signed the letter in that capacity?

Mr. Matteson:

No.

Q. How did you receive that letter, Captain Pilkington?

A. I received it a few days after March 20th.

Q. This letter says, "Will you kindly deliver to Captain Willie Baker the yacht Seminole." Can you tell us whether that came through the mail or whether it was brought to you?

A. It came through the mails.

Q. After that was anything done with the Seminole?

A. I turned it over to Captain Baker.

Q. I show you this letter and ask you what that is; is that something you received, sent or what is it?

A. It has been so long ago that I just can't remember it.

Q. Well now, Captain, I wish you would look at it again and read it carefully. Take your time, as there is no hurry, and see if you can remember the circumstances under which you got it?

A. Yes, if I can remember right the boat was brought in and the crew didn't have time to lay up all of the bedding and one thing and another—

Q. Captain, first we want you to say whether this is a letter that you received or sent?

A. Yes, I received that letter all right.

Mr. Matteson:

I doubt if there is a copy of it in existence, it being a handwritten letter. I offer it in evidence.

Mr. Underwood:

Only the usual objection.

The Court:

Admitted under the same ruling.

(Letter dated May 7, 1934, signed "Palm Beach Company J. F. Riley, above referred to, marked Libelants' Exhibit 47.)

Mr. Underwood:

Subject to someone deciphering it better, we will agree that the date on it is May 7, 1934.

The Court:

All right.

Q. Now, Captain, will you tell us what you remember about receiving this letter?

A. All I can say about it is that I received the letter all right and I permitted the men to go on the boat to lay it up that he sent down.

Q. And that boat was the Seminole?

A. The Seminole, yes.

Q. Now here is another one, Captain, is this a letter that you received?

A. Yes, that is a letter that I received.

Mr. Matteson:

Is there any objection to this letter?

Mr. Underwood:

Just the usual objection.

Mr. Matteson:

I offer it in evidence.

The Court:

Admitted in evidence under the same qualification and ruling.

(Letter dated 9-2-34, signed J. F. Riley, above referred to, marked Libelants' Exhibit 48.)

Q. Now I ask you to look at this letter again, Captain, and tell us what you remember about the circumstances of this letter?

A. I received that letter all right, and Mr. Phipps was down there and told me that he was going to send Captain Abel down to do some work on the Iolanthe and he said he would be down in a few days, so he came and went on the boat and was working on the boat.

Q. Did he bring this letter with him or not?

A. I think he did but I am not sure of it; whether I received it by mail or whether he brought it I don't know; I think he brought it, though.

Q. This letter refers to the Iolanthe and the Seminole?

A. Yes, sir.

Q. Did Captain Abel work on one or both of the boats?

A. What?

Q. Which boats did Captain Abel work on?

A. On the Iolanthe.

Q. Did he work on the Seminole, too?

A. That I couldn't say.

Q. Did Captain Abel work on the boats in the yard more than once; did Abel work on the boats in the yard more than one time?

A. No, not more than once on the Iolanthe; that's all.

Q. Did he ever work on the Seminole that you know of?

A. I couldn't say whether he did or not.

Q. Captain, I ask you what this letter is; is that a letter you received?

A. Yes, I received that letter.

Mr. Matteson:

Do you want to see this, Mr. Underwood? I offer it in evidence.

Mr. Underwood:

I have just the usual objection, if your Honor please; no connection and, in addition, it refers to the Iolanthe and is therefore immaterial.

The Court:

Admitted under the same ruling.

(Letter dated August 26, 1931, signed J. F. Riley, above referred to, marked Libelants' Exhibit 49.)

Q. Now I show you this letter, Captain Pilkington; is that a letter that you received?

A. I don't remember a thing at all about that; my wife generally handled that.

Q. I am not asking you about the substance of it, but is it a letter that you received?

A. I received it all right.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

Same objection.

The Court:

Same ruling.

(Thereupon letter dated September 13, 1932, signed J. F. Riley, above referred to, was marked Libelants' Exhibit 50.)

(By Mr. Matteson):

Q. Now I show you this letter, Captain Pilkington, and ask you if this is a letter that you received?

A. Yes, I received that.

Q. Whose boat was the Dorothy?

A. Mrs. Guest's boat.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:
Same objection.

The Court:
Same ruling.

(Letter dated December 1, 1933 signed Palm Beach Company by Roy H. Hawkins, above referred to, marked Libelants' Exhibit 51.)

Q. Captain Pilkington, you told us about the monthly visits of Mr. Riley. Now will you tell us what Mr. Riley did when he came to the yard on these occasions?

A. He went over all the boats; he examined all the boats and seen that they were in good shape.

Q. And did you have any conversations or dealings with him when he came?

A. Only reported to me sometimes when he came off about the conditions of the boats, and that was all.

Q. Who ventilated the boats when they were in your yard?

Mr. Underwood:

May I ask that that question be restricted to some particular boat?

Mr. Matteson:

We will restrict it to the Seminole, the Iolanthe and Mr. Phipps' fishing boat.

Q. Captain, who ventilated those boats when they were in your yard?

A. I went through the boats to see if there was any mildew in the boats and I saw no mildew in the boats. I generally ventilated them myself before Mr. Riley came down, and when he came down I told him what I had done.

Q. What did Mr. Riley do?

A. He went over the boats again.

Q. When those same boats that we are talking about were stored in your yard what was done with the keys to the boats?

Mr. Underwood:

May I ask that that be restricted to some particular time?

Mr. Matteson:

I am talking about the entire period.

Mr. Underwood:

There is no proof yet that it was the same boat. Our primary interest is what happened with respect to the Seminole in 1935.

The Court:

I think you had better make it more specific.

Q. All right, Captain, I will put it this way: the first time that the Seminole came to your yard what was done with the keys of the boat?

A. Brought to the office.

Q. And on subsequent times that she came to the yard what was done with the keys of the Seminole?

A. Always brought to the office every year with the exception of the last year, the last time it was out.

Q. With reference to the Iolanthe, Captain, what was done to the keys the first time she came to your yard?

A. They were brought to the office.

Mr. Underwood:

Same objection; immaterial.

The Court:

It is admitted subject to the general objection.

Q. What was done on subsequent occasions?

A. Always brought to the office every time.

Q. Where were the keys kept in your office?

A. Right back of the door on alphabetical nails; each boat had its own alphabetical nail.

Q. Tell me this: were there ever any boats stored in your yard without your first receiving the keys of the boat?

A. Yes, there were boats stored in the yard that didn't leave the keys.

Q. Were there many of those?

A. No, sir.

Q. Would it be fair to say that in most cases—

Mr. Underwood:

I object to this as in the nature of cross examination of his own witness.

Mr. Matteson:

It is not intended to be.

The Court:

This may be highly important, so let him answer the questions.

(By Mr. Matteson):

Q. You spoke of a boat that was left without keys. What happened with respect to any such boat, Captain?

Mr. Underwood:

May I object to that as being immaterial, at least until the boat is identified.

The Court:

The question is too general. I will sustain the objection.

(By Mr. Matteson):

Q. Let me put it this way, Captain: were there more boats that left their keys in the office or more boats that didn't?

A. No, sir, only one that I can remember.

Q. What boat was that?

A. That was the Seminole; the last time it was out.

Q. Is that the only occasion on which a boat was stored in your yard without the keys being left with you?

A. That is the only one that I can remember.

Q. Captain Pilkington, I want to ask you about the storage of boats in your yard with gasoline in them. Did you permit the boats to be stored in your yard with gasoline in their tanks?

A. That was left to the owner mostly; I advised them to take it out.

Mr. Underwood:

I object to that and move to strike it out, what he advised the owners, as not responsive to the question.

The Court:

The motion is denied.

Q. Go ahead, Captain, you were telling us about gasoline on the boat.

A. I advised them to take it out; sometimes they didn't take it out so at that time we didn't have no rule to work on.

Q. Coming down to the time when the Seminole was stored with you the last time before the fire, do you remember what date that was?

A. When the boat came in?

Q. Yes.

A. It came in on February 26, I think.

Q. February?

A. Yes.

Q. You mean she arrived at your yard—

A. She left the yard on February 26th and came back, I think, April 6 or April 15th, somewhere around there.

Q. About the middle of April?

A. Yes, somewhere around there; I just can't remember the date.

Q. What time did she arrive there?

A. If I remember right it was in the afternoon, right after dinner time.

Q. About what time o'clock would that be?

A. About one o'clock, somewhere around there.

Q. Who brought her there?

A. Captain Willie Baker.

Q. Who was engineer at that time, do you remember?

A. I don't remember; only it was a man that was working in Palm Beach on some of their boats; I couldn't say what his name was.

Q. Where was the Seminole left when she was brought to your yard?

A. Left out at the wharf at our place.

Q. Where is that?

A. New River, below Fort Lauderdale.

Q. Just outside the shed?

A. Yes.

Q. How far from the shed?

A. About one hundred feet.

Q. How long did the captain and the crew remain on her after they got there?

A. They didn't remain on her very long; I should say about half an hour or three quarters of an hour, not over that.

Q. And did you have any conversation with them at that time?

Mr. Underwood:

May I ask that he be instructed to answer "yes" or "no"?

The Court:

That calls for a "yes" or "no" answer.

Q. Just say yes or no. Did you have some conversation with them?

A. Yes, I had some conversation.

Q. With whom did you have that conversation?

A. That was when the boat came in.

Q. To whom did you talk?

A. Captain Willie Baker.

Q. What was that conversation about?

Mr. Underwood:

I object to that on the ground that no foundation is laid to connect Baker with this Respondent.

(Legal Argument.)

Mr. Matteson:

I simply want to bring out under what circumstances she was left there.

The Court:

The objection is overruled, subject to the same ruling that it be connected up.

Q. Will you tell us, Captain Pilkington, what conversation you had with Captain Baker when he left the boat there?

A. I received a telephone call from Captain Abel to give a message to Captain Willie Baker to send a small package up on the bus, and then I said he had already sent it; then I asked him if he wanted his engines turned over

this year and he said no, that he didn't want that done, so that was all the conversation we had.

Q. Did he speak to you at the time that he left—did he speak to you at the time he left the yard?

A. No; he locked the boat up tight and jumped in his car and went off.

Q. This matter of turning over the engines this year that you asked him about, what was that?

A. Well, as a rule, I turned the engines over about once a month for people that want them turned over; when people don't want them turned I don't touch them.

Q. Captain Baker said he didn't want them turned over?

A. Captain Baker said he didn't want them turned over.

Q. What does it mean to turn over the engines of a boat?

A. Well, every month we turn them over to keep the valves from sticking and oil the cylinders to keep the pistons from sticking. Some large engines they don't turn them over; they just fill them full of oil and let them stand.

Q. When Captain Baker left the Seminole at your yard at that time what was done about the keys, if anything?

A. He took the keys with him.

Q. You didn't receive any keys?

A. I didn't receive a key; no, sir.

Q. After Captain Baker had left did you put the Seminole under your care right away?

A. No, sir.

Q. Why not?

A. Because I wanted to air the boat out; after a boat returns, after a boat runs up there, the engines are always warm and that makes an engine-room very warm, and I wanted the boat to cool off and the engines to cool off before putting it under the shed, and I made that rule to everyone.

Q. To cool off the engines before putting them under the sheds, is that what you mean?

A. Yes.

Q. After the Seminole had been left there did you hear from Riley?

A. I had a telephone call asking me if the boat had gone under the shed; I told him no. I said, "I don't have any keys to get in the boat to air the boat out", and he asked me where the keys was and I told him I didn't know. He said, "I will try to get them for you". And that was all that was said.

The Court:

Mr. Colman, go back and read that answer.

(Preceding answer read by the Reporter as above recorded.)

The Court:

Read it again.

(Preceding answer read by the Reporter as above recorded.)

The Court:

Please read it again.

(Preceding answer read by the Reporter as above recorded.)

Q. After that happened what happened about the keys?

A. After I waited several days to get word from Mr. Riley about the keys, as he promised he would get them for me, there was a man come there one day to go on board the boat to get a small package off, and I told him all right; he handed me the letter; I think I have the order here.

Q. Is this the letter that you refer to?

A. This is the letter I received; that was brought to me by the man who come up.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

Same objection.

The Court:

Admitted under the same ruling.

(Letter dated April 17, 1935, to Captain Pilkington, signed Seminole Boat Co., by Roy H. Hawkins, was marked Libelants' Exhibit 52.)

Q. Do you know who the man was that brought this letter?

A. No, sir; he acted very queer when he came in there and I stood there and watched him—

Mr. Underwood:

I object to that. I object to it as a characterization and conclusion.

The Court:

I think the objection is good.

Q. Well, Captain, did you see this man go on the Seminole?

A. Yes; he didn't stay hardly two minutes and he was off again.

Q. Did he take a package with him?

A. It was so small I could hardly see it.

Q. About the keys; did he have the keys to the boat at that time?

A. Yes, he had keys.

Q. Where was the ~~Seminole~~ at that time?

A. It was laying alongside of the wharf.

Q. Had you received any keys at that time?

A. No, sir.

Q. Did this man give you the keys?

A. No, sir.

Q. What did he do with them?

A. Took them with him; he said he was going to take them back where he got them from.

Q. Did you say anything to him about the keys?

A. I told him that I had to have them.

Q. Now I will show you this letter, Captain, and ask you if that is a letter you received?

A. Yes, sir; I received that letter all right; I received that from the man that came afterwards.

Q. That came when?

A. That came after the articles.

Q. That came after the iron cots?

A. Yes.

Mr. Matteson:

Q. Do you have any objection to this letter, Mr. Underwood. I offer it in evidence.

Mr. Underwood:

Just the usual objection.

The Court:

Same ruling.

(Thereupon the letter dated April 16, 1935, addressed to Pilkington Boatyards, signed J. F. Riley, above referred to, was marked Libelants' Exhibit 53.)

Q. Which of these letters did you receive first; the one about the cots or the one about the silver?

A. I received the one about the silver first—no, I received this one, the one about the iron beds, first.

Mr. Underwood:
That is Exhibit 53?

Mr. Matteson:
Yes.

(By Mr. Matteson):

Q. Now after this man had come with the keys and gone away again, did you do anything further about the keys?

Mr. Underwood:
I am sorry to interrupt, but which man?

Mr. Matteson:
He doesn't know his name.

Mr. Underwood:
Are you referring to the man who brought Exhibit 52 or Exhibit 53?

Mr. Matteson:
52.

(By Mr. Matteson):

Q. After the man came with this letter about the silver, the man who had the keys and took the small package away, did you do anything further to get the keys, Captain?

A. I asked him what he was going to do with the keys and I told him I wanted to have them. He said he was going to take them back where he got them from and he told me if I wanted to know anything further to write to Mr. Hawkins and told me where he was. He told me he was down at the Boulevard Company, so I wrote a letter down there and told him that I had to have these keys before I could put the boat under the shed and that I had

to air it out, and when he sent the keys up he sent two keys up by a letter.

Q. Is this the letter that you refer to?

A. Yes, that is the letter I received.

Mr. Matteson:

Is there any objection to this letter, Mr. Underwood?

Mr. Underwood:

No objection.

Mr. Matteson:

I offer it in evidence.

The Court:

Admitted in evidence.

(Thereupon letter dated April 20, 1935, signed Seminole Boat Co., by W. L. Webber, above referred to, was marked Libelants' Exhibit 54.)

Q. That letter from Hawkins about the keys, did that come in the mail or did someone bring it?

A. That came in the mail.

Q. Were there some keys with it?

A. Yes.

Q. What keys were there with it?

A. Two keys, a large brass key and a small padlock key; I took it to be a padlock key.

Q. Where was the Seminole at that time; was the key under the shed or at the dock?

A. It was outside the shed; I had not put it under at that time.

Q. What did you do with those keys when you got them?

A. I went on and opened up the Seminole all I could, and when I went to the hatch over the engine room I

couldn't make it fit, so there was nothing for me to do but to open up the rest of the boat.

Q. What do you mean by the "rest of the boat"?

A. I went down and went through the boat and opened the windows and opened the doors.

Q. One of the keys you had would let you into the rest of the boat?

A. Yes, that was the large brass key.

Q. What was the other key you received?

A. I took it to be a padlock key, but it was a latch key.

Q. Did you find anything on the boat that that key would fit?

A. Yes, I found the Captain's quarters.

Q. Did you receive any key to the engineroom?

A. No, sir.

Q. How was the engineroom left when the Seminole was left with you; was there any way to get into it?

A. Only through a hatch.

Mr. Underwood:

I object to that as calling for a conclusion.

The Court:

The objection is sustained.

(By Mr. Matteson):

Q. Just tell us about the condition of the engine room when the Seminole was left with you.

A. I don't know anything about the engineroom because I wasn't in it.

Q. How about the engineroom hatch?

A. The hatch was on top; that is the only way you can get in—that is where the crew went in and out, on top of the upper deck, and this key I had didn't fit it, and they were the keys that I gave Captain Abel when he went on the boat.

Q. We will come to that in just a moment. Was the hatch locked or not?

A. It was locked, yes.

Q. How about the skylight on the engine-room?

A. The skylight was down, fastened.

Q. Was there any other way that you know of to go into the engineroom?

A. From what I understood there was, but I never seen it.

Q. Did you know at that time of any other way to get into the engineroom?

A. No, sir, I didn't.

Q. Well, if you couldn't get in her why did you put the Seminole under the shed?

A. Because everything had been all right for the last eight years that I had stored the boats there, and I didn't think anything was wrong; I had given any thought that there was something wrong I would not have put it under the shed. I had gone on the boat, all through it, on Wednesday before the fire and I didn't smell nothing and everything was in good shape.

The Court:

Read that answer.

(The preceding question was read by the Reporter as above recorded.)

Q. Did you do anything further about the keys, Captain?

A. I was waiting for Mr. Riley to come down, as he always promised, and it was his orders by Mr. Phipps to come down there once a month, and Mr. Phipps told me in the presence of Mr. Riley that he would be down the first of every month and that I could look for him.

Q. So you didn't write any more letters?

A. No, sir.

Q. Did Mr. Riley come down there between the time the boat was stored, about the middle of April, and the time when the explosion occurred on June 24th?

A. He came down after the explosion.

Q. But before the explosion he didn't come?

A. No, he didn't come down.

Q. Captain, with these two keys that you received in the letter was there any other part of the Seminole, other than the engineroom, that you could not get into?

A. No, I could get into everywhere on the boat.

Q. You mean to include the engine-room in that?

A. No, sir; I couldn't get into the engineroom; I had no key.

Q. I find there are two or three of these letters that I omitted to speak to you about, Captain: I show you this letter and ask you if that is a letter you received?

A. I just don't remember when I wrote that letter.

Q. Is this a letter that you received?

A. Yes, I received that letter.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

Same objection.

The Court:

Same ruling.

(Letter above referred to was marked Libelants' Exhibit No. 55.)

Q. Captain, you have already testified that this letter, Libelants' Exhibit 40, dated January 18, 1832, is a letter which you wrote to Mr. Riley. Now this letter that I have

just shown you, dated January 21, acknowledging receipt of the letter of January 18—

A. Yes, that is the answer.

Q. Here is another letter, Captain, and I ask you if that is a letter you received?

A. Yes, that is after I made the reduction.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

Just the usual objection.

The Court:

Admitted under the same ruling.

(Letter dated March 21, 1933, signed J. F. Riley, above referred to, was marked Libelants' Exhibit No. 56.)

(By Mr. Matteson):

Q. I show you one more letter, Captain, and ask you if that is a letter that you received?

A. Yes, I received that letter.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

Same objection.

The Court:

Same ruling.

(Letter dated May 3, 1933, signed J. F. Riley, above referred to, was marked Libelants' Exhibit No. 57.)

Mr. Matteson:

I think that now there have been produced and marked as exhibits all of the letters that Mr. Botts produced this morning in response to notice to produce by the other side.

(By Mr. Matteson):

Q. Now, Captain, I am coming down now to the date of the accident, June 24, 1935. Up to that time had Mr. Phipps told you that there was any change in the ownership of the Seminole?

A. No, sir.

Q. Had anyone told you that?

A. No, sir.

Q. How would you send the bills for the storage of the Seminole?

A. We would send them to Mr. Riley in care of the Palm Beach Company.

Q. And from whom did you receive payment of those bills?

A. Mr. Riley and the treasurer of the company; Mr. Riley's name was on some of the checks and some of the checks were—

Q. Now I show you this, Captain Pilkington, which is a photostatic copy of two papers, and will ask you to tell me what those papers are.

Mr. Underwood:

Just a minute. I think we can save a lot of time.

(Discussion off the Record.)

(By Mr. Matteson):

Q. Captain, now I have these original documents pieced together here; can you tell me what that is?

A. I just can't tell you without looking at the books.

Q. This says, "storage—Yacht Seminole, month of May, \$50.00", and attached to it is a check for \$50.00 to George

J. Pilkington. Did you receive that?

A. Yes, I received that.

Q. And this check is dated June 10, 1935?

A. Yes.

Q. Do you remember when you received that?

A. I received it along about that date.

Q. About June 10, 1935?

A. Yes.

Mr. Matteson:

I offer the two parts of this check in evidence.

Mr. Underwood:

No objection.

The Court:

Admitted in evidence.

(Check above referred to was marked Libelants' Exhibit 58-A and voucher above referred to was marked Libelants' Exhibit 58-B.)

(By Mr. Matteson):

Q. Now, Captain, the payments that you had received for storage for the Seminole prior to this time had come in this form or in some other form?

A. They came in that form.

Q. Now here is another one which has been torn apart, same being for \$10.00 dated June 24, 1935. Did you receive that?

A. Yes, I received that during the fire.

Q. What do you mean "during the fire"?

A. Well, he sent up and told me he was sending me the balance of the \$50.00.

Q. Who is "he"?

A. Mr. Riley.

Q. How did this come to you?

A. To me by letter.

Mr. Matteson:

Do you object to this, Mr. Underwood?

Mr. Underwood:

No, I don't object to the check.

The Court:

Admitted in evidence.

(Thereupon check for \$10.00, dated June 24, 1935, above referred to, was marked Libelants' Exhibit 59-A, and voucher thereto was marked Libelants' Exhibit 59-B.)

(By Mr. Matteson):

Q. You say this came in the mail?

A. Yes.

Q. On the day of the fire?

A. Yes, sir.

Q. Now, Captain Pilkington, on the day of the fire did someone come to the yard with respect to the Seminole; did someone come to the yard with respect to the Seminole on the day of the fire?

A. I don't remember whether they did or didn't.

Q. Do you remember Captain Abel coming there the day of the fire?

A. Yes.

Q. Tell me just what happened when he came to the yard.

Mr. Underwood:

If your Honor please, I object to anything about Abel on the grounds previously stated; no connection with the respondents.

The Court:

The objection is overruled, subject to it being connected up.

Q. Go ahead and tell me again about Captain Abel.

A. Captain Abel came there on the day of the fire, about just between one and half past one, and he had an order from Mr. Riley to let him go on the boat and get some equipment, and I says, "do you want a man to help you get it off; I will give you one if you want him", and he says, "no, the equipment is just fishing tackle," and he says, "I can easily get that." And he says, "if I do want any help Mr. Thomas will help me".

Q. Did he say anything else about the fishing tackle?

A. No, sir, he didn't say nothing else.

Q. Did he say for what purpose he wanted it?

A. Yes, he did, as far as that is concerned.

Mr. Underwood:

May it be understood that my objection runs to this whole business and particularly to the conversation?

The Court:

Yes.

A. He said that it was fishing tackle he wanted to get off the boat, and he said he was going to take Mr. Phipps and his party from Pompano on a fishing trip and they wanted extra fishing tackle.

Q. I show you this paper, Captain Pilkington, and ask you what that is?

A. That is the order that he brought to me personally, that he gave to me.

Mr. Matteson:

I offer this in evidence.

Mr. Underwood:
Same objection.

The Court:
Same ruling.

(Thereupon the handwritten memorandum to Captain Pilkington, signed J. F. Riley, undated, was marked Libelants' Exhibit 60.)

(By Mr. Matteson):

Q. Was there anyone with Captain Abel?

A. Yes; Mr. Thomas.

Q. Did Mr. Thomas take any part in the conversation?

A. No, he didn't.

Q. Now after what you have told us, what happened next?

A. Well, I watched Mr. Thomas smoking a cigarette and then I asked him to put the cigarette out, that I didn't want any smoking in the shed.

Mr. Underwood:

May it be understood that my objection runs to all of this?

The Court:
Yes.

(By Mr. Matteson):

Q. Do you have any rule with respect to smoking?

A. Yes.

Mr. Underwood:

I object to the rule about smoking.

The Court:

You have asked him if he had a rule?

Mr. Matteson:

Yes.

The Court:

The objection is overruled.

(By Mr. Matteson):

Q. Did you have a rule about smoking?

A. Yes.

Q. Was that rule posted or published?

A. It was posted on the place on a sign.

Q. Captain Abel was smoking, you said, or was it Thomas?

A. It was Captain Thomas and Captain Abel both.

Q. Tell me from there again; just go ahead and tell me what happened.

A. They put their cigarettes out all right and then went in the shed. I watched them until they got on the Seminole, on the upper deck. They made their first stop beside the hatch that goes into the engineroom, and they stayed there quite a little while and then they couldn't get in the hatch, couldn't get the hatch open, and they went down in the back and in the after door of the cockpit, and that's the last I seen of Captain Abel until they brought his charred body out of the fire.

Mr. Underwood:

I move to strike out the witness' conclusion that they couldn't get the hatch open.

Mr. Matteson:

Let me ask one more question?

The Court:

Before ruling on that?

Mr. Matteson:

Yes.

The Court:

All right.

(By Mr. Matteson):

Q. Just tell me what you saw them do at the hatch, if you saw them do anything.

A. I couldn't see what they were doing because it was down back of the awning; what they were doing I couldn't say.

Q. You just saw them in that vicinity?

A. I seen them stay there quite awhile, and then I seen them get up and go away.

Mr. Matteson:

I have no objection to striking out the conclusion.

The Court:

The motion is granted.

(By Mr. Matteson):

Q. Can you tell us whether or not they opened the hatch?

A. They didn't open the hatch.

Q. You say they got into the stern door?

A. Yes.

Q. How long after that was it that the explosion happened?

A. About fifteen minutes, fifteen minutes.

Q. Did you know Captain Abel before this?

A. Slightly.

Q. How did you know him?

A. Just from Mr. Phipps sending him down there to work on the Iolanthe, and he came there about a boat, a small boat at one time.

Q. Do you know whether they had any arrangement on the Seminole for drawing off gas?

A. Only what I have been told by Captain Abel.

Q. Well, have you observed anything with respect to that?

A. Yes, I observed that they drew out five gallons of gas one night after the, after he, quit work.

Q. Who was it that brought it off?

A. Captain Abel himself.

Q. Did you do or say anything about it at that time?

A. I didn't know anything about it, but I asked him where the—I asked him where he got the gas and he said he got it off the Seminole. I said, "you didn't connect onto the pipe down at the engine and draw the gas that way, did you", and he said, "no, I got it out of the spigot where you generally draw gas to put on the launches".

(By Mr. Matteson):

Q. Well, did you say anything about that?

A. I told him not to do it again; I told him not to draw any more gas out and he said he wouldn't. So the next night he came out with fifteen gallons of gas. I stopped him right there, and I told him not to go in there any more to do any work. I told him to tell Mr. Riley the same thing. Then he didn't come back to work for three or four days. I got a call from Mr. Riley to have the Iolanthe out in front of the building, that they were going to bring it up to Palm Beach to have Captain Abel work on it up there.

Q. Now about this rule against smoking that you have in the yard: did you have any difficulty in enforcing that rule?

A. No, sir.

Q. You spoke about the rule against smoking and I think you said it was posted. Can you tell me what this picture shows?

A. It shows "no smoking".

Q. Is that the sort of a sign you had posted in the yard?

A. Yes.

Q. This one is a picture of the new yard, is it not?

A. Yes, of the new yard.

Q. Was a sign posted in the old yard like this one?

A. No, sir. Let me show you. It had painted up in here on this first post: "No Smoking"; painted in red letters.

Q. How near was that to the entrance where you went into the shed?

A. They had to go down underneath on the left to get to it.

Mr. Underwood:

I would like to make an inquiry at this point. I recall nothing in the pleadings that would lay any foundation for a claim that anybody started this fire by smoking.

Mr. Matteson:

We do not claim that at all.

Mr. Underwood:

May I ask what the materiality is?

Mr. Matteson:

It has something to do with the general character of Captain Abel.

(By Mr. Matteson):

Q. Did you ever have any difficulty with Captain Abel with respect to that rule, with respect to smoking?

A. Well, I just had told him not—when he first came down there I told him that I didn't want any smoking in the building and he said all right, that he wouldn't smoke.

Q. Are you referring to the time of the fire or to some other time?

A. No, that was another time.

Q. What time are you referring to, Captain?

A. I thought you asked me about the time when he first went under there to work.

Q. That is correct. What happened at that time?

A. He promised me he wouldn't smoke, and he didn't smoke, that is, I didn't see him smoking until I had come up from down the lower part of the building, and when I came up the boardwalk I saw him smoking on the bow of this boat, the Iolanthe. I didn't say anything to him, but I untied the line and was pushing the boat out, and he wanted to know what I was going to do. I told him about the promise he made about not smoking, and I was going to push his boat outside and that he could take it where he pleased. He said, "please don't do that; leave it here, and I will promise you I won't do any more smoking".

Q. And that was all of that?

A. Yes.

Q. Now, Captain, were there any other boats in the yard at the time of the fire, or any boats with the possible exception of the Seminole that had gasoline in their tanks?

A. That I don't know.

By Mr. Underwood:

I object to that, if your Honor please. Let him say^d what he did and what examination he made—

The Court:

The objection is sustained.

Q. Can you tell us, Captain, whether there was any other boats with the possible exception of the Seminole?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Do you remember telling Mr. McCoy that no boats were allowed to be laid up with gasoline in them?

Mr. Underwood:

Wait a minute, Captain, please: I object to this. This is his witness and he now embarks upon cross examination of him.

(Extended Legal Discussion)

The Court:

I think the objection is proper. The objection is overruled.

Q. Just answer yes or no.

A. Yes. I knew there was gasoline on it.

Mr. Underwood:

I move to strike that out.

The Court:

The question calls for a yes or no answer. Reframe the question.

Mr. Matteson:

Would not the objection be satisfied if we allowed the "yes" to remain, and strike out the rest of the answer. The rest of the answer is his explanation, and I have no objection to striking out the explanation, because I will ask other questions relating to that.

The Court:

I think probably you are right, but to avoid any semblance of error, in view of the fact that the extra statement was made, I will adhere to my ruling.

(By Mr. Matteson):

Q. I will get at it this way: Tell us, Captain, what you know or observed with respect to whether or not there was any gasoline in the Seminole at the time of the fire, or while she was in your yard?

A. I don't know anything only what I was told.

Q. Did you observe anything at any time?

A. No, I didn't. I didn't know there was any—as far as I am concerned personally myself—in the tank, and what I told you what—it was just hearsay.

Q. After the fire do you know anything about the arrangements for raising the Seminole or recovering the body?

A. No, sir.

Q. Did you have anything to do with that?

A. No, sir.

Q. Did you see Mr. Garry Miller, of Fort Lauderdale, at your yard, at the time of the fire?

A. He was there; they told me he was going to take charge of the place.

Mr. Underwood:

I move to strike out what Mr. Miller told him. It is not responsive and not binding on the Respondents.

The Court:

He didn't say Miller told him; he said, "they told him."

Mr. Underwood:

Yes.

The Court:

And you move to strike out what they told him?

Mr. Underwood:

Yes.

The Court:

The motion is granted.

Q. Who is Mr. Miller?

A. He is the County Attorney.

Q. Of Broward County?

A. Yes, sir.

Q. What did he do when he came there?

A. Really I didn't see what he done, only what I was told, after I asked them all to investigate for me the cause of the fire.

Q. Do you know about any parts that were recovered from the Seminole?

A. No, sir.

Mr. Botts:

Just a minute. Captain Pilkington is 70 years old and he has been here talking all day, so I ask that this hearing be adjourned at this time. I tried to get him to lie down at noon, but he wouldn't do it, so I am going to ask an adjournment until tomorrow morning because of his physical condition. He is a very old man and he was very ill about two months ago, and I have some questions to ask him myself, therefore I would like to have an adjournment until tomorrow morning.

The Court:

We will adjourn until tomorrow morning at 9:30.

At 9:33 o'clock a. m., Friday, March 17, 1939, Court reconvened pursuant to adjournment of the previous day, and the trial of the case at bar was resumed; whereupon the witness

545

GEORGE J. PILKINGTON resumed the stand and further testified as follows:

Direct Examination Continued.

By Mr. Matteson:

Q. Captain, I have one more letter that I want to show you; is that a copy of a letter that you wrote or sent, or received, or what is it?

A. Yes, sir; I received that, yes.

Q. Is this a letter that you wrote, you sent, or received?

A. I sent that letter.

Q. Sent that letter?

A. Yes, sir.

Mr. Matteson:

Mr. Underwood, have you the original of this letter?

Mr. Underwood:

Yes.

Q. Is this the original of that letter, Captain? Is that the original letter?

A. That's the original; yes, sir.

Mr. Matteson:

I offer that in evidence.

The Court:

Admit it.

(Said letter so identified and offered was introduced in evidence and marked Libelants' Exhibit No. 61.)

Q. I show you this other letter, Exhibit 45; is this one that I just showed you, the answer to that letter?

The Court:

You had a general objection?

Mr. Underwood:

I don't object to that at all.

A. Yes, that is the answer to that.

Mr. Botts:

Will you identify those, please, by exhibit numbers?

Mr. Matteson:

I have; these are exhibit numbers 54 and 61.

Mr. Botts:

I understand the witness identifies 61 as the answer to 54; is that correct?

Mr. Matteson:

That is right.

Q. I show you one more, Captain Pilkington: is that a letter that you received or sent, or what is it?

A. I think, if I can remember right, Captain Davis brought that letter to me.

Q. You received it?

A. Or Captain Baker.

Q. You received that?

A. Yes, sir.

Mr. Matteson:

I offer this in evidence. Do you want to see it, Mr. Underwood?

Mr. Underwood:

Just the usual objection to this, your Honor.

The Court:

Admitted, then, with the same ruling.

(Said letter was introduced in evidence and marked as Libelants' Exhibit #62.)

Q. This is subsequent to the date of the fire.—Captain, this last letter that I have shown you, Exhibit 62, is dated September 30, 1935, and is a request to allow Captain, Baker to remove the hull of the Yacht Seminole, from your property. Was that after the fire?

A. That's after the fire.

Q. And as the result of this letter, what happened?

A. They took the boat away; the hull away.

Q. The wreck?

A. Yes, the wreck.

Q. Captain, are there any books kept at your yard? Did you keep any books there?

A. Yes, sir.

Q. And who keeps those books?

A. My wife.

Q. And who does the billing for the yachts?

A. My wife.

Q. And who makes the deposits—keeps track of the receipts?

A. Sometimes my wife, and sometimes myself.

Q. And who writes the letters?

A. I write a letter.

Q. In asking those questions, I am referring to the time prior to the fire. Was that true then?

A. Yes; that's right.

Mr. Matteson:

That is all.

Mr. Botts:

I guess you would rather I would cross examine this witness?

Mr. Underwood:

He is your witness.

By Mr. Botts:

Q. Captain, how long have you been in the yacht storage business?

A. Something like thirty five years.

Q. How old are you, Captain?

A. Seventy seven.

Q. At the time of the fire, Captain, where was your residence, with relation to the sheds of your storage yard?

A. Right along the side of the shed.

Q. A comparatively few feet from the water, is it not?

A. About twenty feet.

Q. Yes. Did you have an office for your business?

A. I had an office in the building where I live.

Q. In your residence, was your office?

A. Yes.

Q. And you didn't hire a bookkeeper?

A. No, sir.

Q. Mrs. Pilkington, did that work?

A. Yes, sir.

Q. And you and she together, you were the manager, and she assisted you, is that about the situation?

A. That's right; yes, sir.

Q. Now was your residence at the same place on that occasion back, soon after the Seminole was first stored with you, when you mentioned a visit by Mr. Phipps?

A. Yes, sir.

Q. Where did that interview between you and Mr. Phipps, take place?

Mr. Underwood:

If your Honor please, may we have the conversation fixed? I don't know which conversation. The witness has mentioned several.

Mr. Botts:

I said the first time when Mr. Phipps came there.

Mr. Underwood:

I didn't so understand it.

Mr. Botts:

Well, if I didn't, I intended to; I beg your pardon; I intended to.

Q. In order to make that clear: you recall the occasion when Mr. Phipps first came to visit you at your yard? Just answer yes or no.

A. Yes, well, yes, I do.

Q. Now then, on that occasion of his first visit, were you then living at the yard?

A. I was; yes, sir.

Q. And as near as you can place it, will you tell us where that conversation took place? That is, on the premises, in the house, the yard, or where?

A. That took place about thirty feet away from the northeast corner of our building.

Q. On the land?

A. On the land; yes.

Q. Outside of the storage shed?

A. Yes, sir.

Mr. Botts:

I don't want to ask this witness; I want to refresh my memory.

Q. Now Captain, how deep is the water in your—at the time of this fire, and at the time you were storing the Seminole, how deep was the water in your dredged slip or basin?

A. It was six feet at low water, and in some places where people wanted their boats to lay on the silt at low water, I had different places for that, about four feet.

Q. Were these boats afloat at high water?

A. Yes, sir.

Q. All of them?

A. Yes, sir.

Q. And as I understand it, you say some owners wanted their boats to lay on the bottom, part of the time?

A. Well there was some places where I had—it is shallow, where I could do that.

Q. If they wanted it?

A. If they wanted it.

Q. Now you have testified that on this first occasion when Mr. Phipps visited you, that he was accompanied by some one, I believe; who was that?

A. I don't remember, that has been so long ago.

Q. Well, do you remember who was with Mr. Phipps, I say?

A. Not on the first occasion. Sometimes he came in by himself, and other times he came in with Mr. Riley.

Q. Well now then, will you identify the occasion when Mr. Phipps brought Mr. Riley and introduced you to him as Mr. Riley, as his private secretary and manager?

A. That was a short time after I received a letter from Mr. Huff.

Q. Well now was that the first visit Mr. Phipps made to the yard?

A. No, sir.

Q. I see; all right. Now what time of day, as near as you can recall, was it when Mr. Phipps and Mr. Riley came there?

A. It is pretty hard for me to say.

Q. You can't tell?

A. I can't remember.

Q. Now then when Mr. Phipps talked to you about storing the Seminole, did he make any statement to you as to who was the owner of the Seminole? Just answer yes or no.

A. Yes, he did.

Q. What did he tell you in that respect?

A. Told me he was the owner of the boat.

Q. Yes. Subsequent to that statement by Mr. Phipps, that he was the owner of the Boat Seminole, and prior to the fire, did Mr. Phipps ever inform you as to whether or not there had been any change in the ownership of the Seminole? Answer that yes or no.

A. No, sir.

Q. Prior to the time of the fire and subsequent to the time when Mr. Phipps identified Mr. Riley as his agent, did Mr. Riley ever inform you whether or not there had been any change in the ownership of the Vessel Seminole?

A. No, sir.

Q. During the period of time from the date when the Seminole first was put in storage with you, up till the time of the fire, did any one give you any information as to whether or not there had been a change in the ownership of the Seminole?

A. No, sir, there wasn't.

Q. During that period of time from the first storage of the Seminole, until the fire, did you from any source secure any information that there had been any change in the ownership of the Seminole?

A. No, sir.

Q. On the date of this fire, so far as you knew, who was the owner of the Seminole?

A. John S. Phipps.

Q. When Mr. Phipps on that visit when he told you he was the owner of the Seminole,—did he give you that information at your request?

A. No, sir.

Q. He voluntarily told you that?

A. Voluntarily.

Q. Did you at that time or any time explain to Mr. Phipps any reason why you desired to know who the owner of the boats were? Did you tell him?

A. Yes, I told him.

Q. What did you tell him was the reason?

A. I told him I had to have—

Mr. Underwood:

Let's have the time fixed; is this the same conversation?

Mr. Botts:

Yes, sir.

Mr. Underwood:

May we call this the Rilet introduction conversation?

Mr. Botts:

No, it was the one prior to that; that is my understanding.

Mr. Underwood:

I didn't so understand it. Let's get the fact.

Mr. Botts:

Now, read the question.

(Question read.)

A: I told him that I had to have the name of the boat when it come in, who was the owner of that boat, and I had to have it for my record as well as the Government Inspector; and I had to have it for the—or the Captain's

name, to give to the Inspectors when they came around. Sometimes they asked for it, and other times they didn't.

Q. How long, as near as you can recall it, was this conversation after the Seminole was first stored with you?—as near as you can fix it.

A. Well, I received a letter from Mr. Huff, and it was a few days after that; but I don't remember the date of that letter.

Q. But it was a relatively short time from the time you received the first letter?

A. Yes, sir.

Mr. Botts:

I think that is all, Mr. Underwood:

Q. Did you talk to Mr. Phipps while the boats were in charge of Mr. Simmon, or Mr. Huff, or which way? Which one was in charge of the boats first?

A. Mr. Simmon.

Q. Now then did you talk to Mr. Phipps before they were turned over to Mr. Huff? Do you remember?

A. Yes, sir.

Q. Then it was some time in the period from the time you received the first letter from Mr. Simmon, until about the time they were turned over to Mr. Huff?

Mr. Underwood:

I object to that as leading.

Mr. Botts:

I grant that, and strike it out; that is right; you are perfectly correct. I think the date is sufficiently clear.

Q. Did you ever put the Seminole in that shallow water where it would be grounded at low water?

A. No, sir; never.

Q. She was afloat at all times, the Seminole was? I say, the Seminole was afloat at all times, was she?

A. Oh yes.

Q. Captain, if you get tired, I am sure the Judge will give you a little time to rest if you want to. So if you do, don't hesitate to suggest that; because the Judge realizes that you are not as young as you were once, and I am sure if you feel like you need a little rest, if you will speak to the Judge, I am sure he will do it.

A. Thank you.

Cross Examination.

By Mr. Underwood:

Q. Captain Pilkington, I show you Exhibit 40, a letter which you wrote to the Palm Beach Company; and I call your attention to the fact that you refer to a letter of the 15th instant, meaning a letter of the Palm Beach Company. Do you remember such a letter?

A. I haven't seen these letters in three years, and I just can't place them.

Mr. Underwood:

I have included that in my Notice to Produce, I believe.

Mr. Botts:

That was one of the ones we couldn't find?

Mr. Underwood:

Well, is it? I call for the production of the letter.

Mr. Botts:

Wait a minute; I can tell you which ones we did find. What was the date of that?

Mr. Underwood:

January 15, 1932—'3.: '32.

Mr. Botts:

No, that was one we were not able to find.

Mr. Underwood:

All right, thank you.

Q. You needn't bother with that any more right now.

A. I can't hardly see.

Q. The light is very bad there.—Is that a letter you wrote to the Palm Beach Company?

A. You want me to explain that?

Q. No, just tell me whether or not that is a letter that you wrote.

A. Yes, sir, I wrote that letter.

Mr. Underwood:

I offer it in evidence; letter dated June 22, 1934.

Mr. Botts:

No objection.

The Court:

Let it be admitted.

(Said letter thereupon was introduced in evidence and marked respondents' Exhibit E.)

Q. Now Captain, I show you a copy of a letter; will you tell me whether or not you received the original of that letter.

Mr. Botts:

What is the date of that?

A. That is dated February 23, 1935.

A. Yes, sir; I received that letter.

Mr. Underwood:

I offer it in evidence.

Mr. Botts:

No objection.

The Court:

Admit it.

(Said letter was thereupon admitted in evidence and marked respondents' Exhibit F.)

Q. Captain, I show you a letter dated June 13, 1935; did you write that letter?

A. Yes, sir.

Mr. Underwood:

I offer that in evidence; letter to the Palm Beach Company.

Mr. Botts:

No objection as far as Captain Pilkington is concerned.

Mr. Matteson:

No objection.

The Court:

Admit it.

(Said letter was thereupon admitted in evidence and marked respondents' Exhibit G.)

Q. Captain, is it your contention that you never heard of the—

A. I can't hear you there.

Q. Is it your testimony that you never heard of the Seminole Boat Company prior to the fire?

A. Not as I can remember; I don't remember anything only what I have said. I might have heard, but never paid any attention to it. But rumors travel fast.

Q. Do you deny that you knew of the Seminole Boat Company?

A. No, I don't.

Q. You don't deny it?

A. No, I do not deny it.

Q. Do you remember that you did know of the Seminole Boat Co.?

A. No, sir; I did not know it; personally I did not.

Q. You did not know what?

A. Did not know the Seminole Boat Company.

Q. You hadn't heard of it, prior to the fire?

A. The rumors—but I don't believe rumors; I got to have it direct.

Q. Do you say that you never received any communication from the Seminole Boat Co.?

A. I received some little orders; but I never paid any attention to it, because I got strict orders from Mr. Phipps to take no orders from any one except Mr. Riley as his agent.

Q. Is it not a fact, Captain Pilkington, that in February 1935 you delivered the Seminole to Captain Willie Baker on the order of the Seminole Boat Co., signed by Roy Hawkins?

A. I don't know—remember whether the Seminole Boat Co. was stamped on the letter or not.

Q. I show you defendants' Exhibit F, which you testified not fifteen minutes ago that you received, and call your attention to the fact that the signature on that letter reads "Very truly yours, Seminole Boat Company, by Roy H. Hawkins". Is it not a fact that you delivered the boat to Captain Willie Baker on the strength of that order?

A. No, I didn't deliver it on really the strength of that, because I know Capt. Baker was the captain for Mr. Phipps once in a while.

Q. The letter made no difference to you?

A. The letter made no difference to me at all whatever, because Mr. Hawkins wasn't in it.

Q. Is that the first time you ever heard of the Seminole Boat Co.?

A. I have heard by letters but I have never paid no attention to it, because I got strict orders from Mr. Phipps to take no orders from any one but Mr. Riley.

Q. Is it your testimony that you sent all your bills for storage either to Mr. Simmon or to Mr. Riley?

A. I sent them all to either one of them, Mr. Simmon in the beginning, and Mr. Riley always after I got orders from Mr. Phipps.

Q. And is it your testimony that your bills were paid either by the Boulevard Mortgage Co. or by the Palm Beach Co.?

A. Through Mr. Riley, and Mr. Riley's name on them.

Q. Let me make it clear. Were you ever paid by a check of anybody else other than the Boulevard Mortgage Co. or the Palm Beach Co.?

A. That I don't remember, whether I was or not; I got so many.

Q. Were you ever paid by the Seminole Boat Co.?

A. No, sir; never.

Q. Are you sure about that?

A. I am sure about it.

Q. Positive of it?

A. I am positive.

Q. Captain, I show you a piece of paper and ask you whether or not that is your signature.

A. That's my signature.

Q. Don't look at the other side. Is that your signature?

A. Yes, that's my signature.

Mr. Underwood:
I offer that in evidence.

Mr. Matteson:
Are you offering this in evidence?

Mr. Underwood:
Yes.

Mr. Matteson:
Well what are you offering: Captain Pilkington's signature, which he has been asked about?

Mr. Underwood:
I am offering the check.

Mr. Matteson:
Well I think he ought to be shown the entire document before it is offered in evidence.

Mr. Underwood:
I don't see the necessity for it; he has identified it as a document on which he put his name. Mark that, please.

The Court:
Any objections?

Mr. Botts:
I would like to ask Mr. Underwood if there is any objection to the witness seeing the document.

Mr. Underwood:
Not in due course, no.

Mr. Botts:
Well I am going to object to it until the witness has a chance to examine it.

The Court:

He admitted his signature. The objection is overruled. Now you are getting into the very trouble that my suggestion contemplated. This has been offered in evidence; the further examination of Capt. Pilkington by Mr. Botts and Mr. Matteson is going to be cross examination—not going to be re-direct.

Mr. Underwood:

I am not at all sure that that is true, your Honor, from my way of thinking.

The Court:

Well, you have offered it.

Mr. Underwood:

That is right.

The Court:

Now when he is examined, why it is going to be cross examination.

Mr. Underwood:

But they have raised the subject of payment; I am going into the subject of the method of payment.

The Court:

I think we had better follow the strick rule, and avoid these difficulties, and let you not offer that in evidence; let you identify it, then when you make out your case you can offer it, and then the further examination of Capt. Pilkington will be re-direct, and it won't be cross on that particular matter.

Mr. Underwood:

We will mark it then for identification.

(Thereupon said check was marked as respondents' Exhibit H-1 for identification.)

Q. Do you remember that check, Exhibit H-1, Captain?

A. I don't remember the check at all.

Q. Do you notice that it says, Seminole Boat Company, By:?

A. Yes, I do.

Q. I show you the back of another check, Captain, and I ask you if that is your signature?

A. That's my signature, yes, sir.

Q. Did you receive that check?

A. I received the check.

Q. Do you notice that it too is signed, Seminole Boat Company, By—Roy H. Hawkins; countersigned Paul R. Scott?

A. I don't remember the checks at all.

Mr. Underwood:

I offer that for identification.

(Said check was marked respondents' Exhibit H-2 for identification.)

Q. January 16, 1929.—I show you, Captain, the back of another check; is that your signature?

A. Yes, sir.

Q. I call your attention to the fact that that check is signed, Seminole Boat Co., By Roy H. Hawkins, countersigned Paul R. Scott. Do you recall that check?

A. I don't recall those checks at all, because it has been so long ago; that's been several years ago.

Q. Ten years.

A. What say?

Q. Almost ten years; in fact it is more than ten years ago.—Ten years ago.

A. Pretty near—I can't remember that far back.

Q. Your memory is not strong about matters that occurred that long ago?

A. No, sir; not altogether. Sometimes if I have something that will—some pointers on such as that, I remember, sometimes.

Q. Do you mean that if you are prepared in advance you can remember these things?

A. No; if I have my attention called to it in a way that I can remember.

Q. Well I call your attention to this check, which you have just identified, February 11, 1929; and ask you what memories that brings to your mind about the Seminole Boat Co.

A. I don't remember that check at all, nor any connection with the Seminole Boat Co.

Q. You received the money?

A. I received—I got my check, all right.

Q. The check was paid?

A. Mr. Simmon must have sent it to me.

Q. You indorsed the check and put it in the bank to your credit, I suppose?

A. Yes.

Mr. Underwood:

I offer the check.

(Said check was marked as respondents' Exhibit H-3 for identification.)

The Court:

If you want to proceed with this evidence offered, and allow the full scope of cross examination when Capt. Pilkington is re-examined by Mr. Botts and Mr. Matteson, it is all right with the Court.

Mr. Underwood:

We will proceed this way, as we have been doing for the last two or three minutes.

The Court:

All right.

Q. Captain, I show you another check; is that your signature?

A. Yes, sir.

Q. You received that check?

A. Yes, sir; I received that.

Q. You deposited it in your account in the bank?

A. Yes.

Q. The check is dated April 24, 1929; I call your attention to the fact that it is signed, Seminole Boat Co. by Roy H. Hawkins, countersigned Paul R. Scott. Does that bring up any memory of the Seminole Boat Co.?

A. I can't remember anything that long ago; I can't explain nothing.

Mr. Underwood:

I offer that on the same basis.

(Said check was marked respondents' Exhibit H-4 for identification.)

Q. I show you another check; is that your signature?

A. That's my signature; but that's not mine.

Q. You mean the words "For deposit in bank of Pompano, Pompano, Florida", are not in your handwriting?

A. No, sir; that's not in my handwriting. This is.

Q. The words "Capt. George J. Pilkington" are?

A. Yes, sir.

Q. The check is dated September 11, 1930. Captain, I call your attention to the fact that check is signed, Seminole Boat Co. by Roy H. Hawkins, countersigned Paul R.

Scott. Does that bring back to your mind any recollection of the Seminole Boat Co.?

A. Nothing in—anywheres near in that time it doesn't.

Mr. Underwood:

I offer that on the same basis.

(Said check was marked Respondents' Exhibit H-5 for identification.)

Q. I show you another check; is that your signature?

A. No, sir; that's not my signature.

Q. Is that your wife's signature?

A. Yes, sir.

Q. Did your wife receive that and sign it for you?

A. Yes.

Mr. Underwood:

The check is dated November 4, 1930. I offer that for identification.

(Said check was marked respondents' Exhibit H-6 for identification.)

Q. I show you another check, Captain; is that your signature?

A. Yes, sir; that's mine.

Q. Check dated December 5, 1930. And I call your attention to the fact, Captain, that that check is signed Seminole Boat Co. by Roy H. Hawkins, countersigned Paul R. Scott. Does that bring back to your mind any memories of the Seminole Boat Co.?

A. No, sir.

Mr. Underwood:

I offer that on the same basis.

(Said check was marked respondents' Exhibit H-7 for identification.)

Q. I show you another check, Captain; is that your signature?

A. No, sir; that is not mine.

Q. Is that your wife's signature?

A. That is my wife's signature.

Q. On your behalf?

A. I don't know whether it was in my behalf or not; but if it was my check, why she put it in the bank.

Q. You notice the check is drawn to Capt. George J. Pilkington.

A. No, she has not got it indorsed right.

Q. That is her signature on your behalf?

A. Yes, that is her signature.

Q. Check dated December 31, 1930. That check too, Captain, is signed Seminole Boat Co. by Roy H. Hawkins, countersigned Paul R. Scott. Does that bring back to your mind any memories of the Seminole Boat Co.?

A. I don't have any recollection of any dealings with the Seminole Boat Co.

Mr. Underwood:

I offer that on the same basis.

(Said check was marked as respondents' Exhibit H-8 for identification.)

Q. Now is it your testimony, Captain, that you—still your testimony that you have no recollection of the Seminole Boat Company?

A. I don't have any recollection of it—I forget your name.

Q. Well, never mind my name; my name is Underwood.

A. Well I don't have any recollection of the Seminole Boat Co. at all; no business; on account of the orders given to me by Mr. Phipps.

Q. That's all you can remember?

A. That's what I can remember, but that's later on. That was a good bit later than that, that's the reason that I can remember, because Mr. Phipps is the one that told me them boats belonged to him.

Q. Now Captain, you testified this morning that you had a conversation with Mr. Phipps and that he told you those boats belonged to him, and that that was prior to the time that Huff took charge of the boats; is that correct?

A. It's so long ago—

Q. Is that correct, please?

A. I can't say whether it is correct or not.

Q. Do you remember so testifying when Mr. Botts was questioning you, this morning?

A. About what?

Q. Do you remember stating this morning, in answer to a question by Mr. Botts, that you had a conversation with Mr. J. S. Phipps before Mr. Huff was put in charge of the boats, and that it was on that occasion that he told you the boats belonged to him?

A. I had a conversation with Mr. Botts shortly after the boat came in.

Q. With Mr. Phipps, you mean?

A. Yes, Mr. Phipps, I meant to say.

Q. Now that conversation you said this morning was before the time that Huff took charge of the boats?

A. Yes, sir.

Q. Is that correct?

A. That's correct.

Q. Now you have said that it was on that occasion that Mr. Phipps told you the boats were his; is that correct?

A. He told me the boats was his; yes.

Q. On that occasion?

A. Yes.

Q. Now it was subsequent to that, and you have said, shortly after Mr. Huff's letter telling you that he was no longer in charge, that you had, you say, the conversation in which Riley was introduced as your secretary; is that correct?

A. Yes, sir; that's correct.

Mr. Matteson:

You mean that Riley was Phipps' secretary? You said "your" secretary.

Mr. Underwood:

"His" secretary is correct.

Q. Now you got that letter from Huff stating that different arrangements had been made, on April, 1929; is that the fact?

A. Yes, sir.

Q. The letter is dated April 2, 1929.

A. April the what?

Q. April 2nd 1929.

A. '29.

Q. So that your conversation in which you say Mr. Phipps said that the boats were his, was before April 2, 1929, was it not?

A. Mr. Phipps was in there shortly after the boats came in, with Mr. Simmon.

Q. Now you have told me that your conversation with Mr. Phipps in which he said that he owned the boats, was before Huff took charge?

A. Yes, sir.

Q. Now Huff had taken charge in February 1929, according to the letter that you got from Mr. Simmon; isn't that right?

A. That's right.

Q. So that your conversation with Mr. Phipps in which as you say he said that he owned the boats, was before February 1929, wasn't it? Isn't that the fact? Isn't that the fact?

A. I had so many conversations—

Q. Just please, Captain, answer my question. Is not that the fact?

A. I won't answer that question in that way, because I had so many conversations with Mr. Phipps, I can't remember.

Q. I am not interested in any conversation except the one just now.

A. Yes, I had several conversations.

Q. All right; I am only talking now about one conversation.

A. Well I can't remember which conversation you mean.

Q. Well I will make it clear to you. In all your testimony here in this Court room you have referred to one conversation in which Mr. Phipps as you say, said that he owned these boats; and you have said that that conversation occurred prior to the time of Huff. Now you have got a letter from Simmon dated February 11, 1929, Exhibit 38, in which Simmon told you that Huff was going to be in charge. Therefore is it not a fact that that conversation with Mr. Phipps where, as you say, he said that he owned the boats, was before February 11, 1929?

Mr. Botts:

Wait a minute; don't answer that.

Mr. Matteson:

I object to that question as argumentative.

The Court:

The objection is overruled. I think it would be well to show him the letter, to supplement the question; but on

the ground of being argumentative; the objection is overruled.

Mr. Underwood:

I don't think I could repeat that question, so I will go at it again.

Q. Captain Pilkington, I show you Exhibit 38, dated February 11, 1929. Is that the letter that brought to your attention Huff's interest in the boats?

A. Yes, sir.

Q. That's the beginning of Huff, so to speak?

A. Yes, sir.

Q. Is it not the fact, as I believe you have already testified, that you had a conversation with Mr. Phipps prior to this letter?

A. Yes, sir.

Q. And is it not the fact, as I believe you have testified, that it was at that conversation that Mr. Phipps stated he was the owner of the boats?

A. He said he was the owner of the boat at that time, and several different times.

Q. Now you haven't told us previously in your testimony, of any other conversation in which he said he owned the boats.

A. Oh yes I have.

Q. Not in your previous testimony here.

The Court:

Well, that's argumentative.

Mr. Underwood:

Yes, I appreciate that, your Honor.

Q. Now Captain, according to my notes you have referred—can you hear me from here?

A. Not altogether I can't.

Q. Now Captain, according to my notes you have referred to six different conversations with Mr. Phipps, and I want to go into these one by one, and see if we can clear them up. We have talked just now about your conversation with Mr. Phipps prior to Huff's time. Have you told me everything that you recall of that occasion?

A. I told you that I have had several conversations with Mr. Phipps, at different times, ever since the boat has been in my place; and I can't recall one conversation from the other, because it has been so long ago.

Q. And have you told me everything that you recall about the conversation that you say you had before you got Simmon's letter introducing Hugg?

A. No, I haven't told you all.

Q. Do you remember now some more?

A. I can remember when I was building a drydock, Mr. Phipps was in there one day—

Q. Now wait; Captain, I am asking you about this particular conversation, the one that occurred prior to the time you got Simmon's letter about Huff.

A. Well, I have had several conversations; but I can't remember what conversation that is.

Q. I am just asking you now Captain about that one conversation. You remembered very clearly for Mr. Botts, that it occurred, I think you said, within thirty feet of the water; do you remember that?

A. Yes; he always talked to me when he came off the boat; and that's where he came off.

Q. Well, do you have a clear recollection that that conversation before you got Simmon's letter introducing Huff, was within thirty feet of the water?

A. I can't tell exactly what he said, word for word; but the first—one of the first times he talked to me about he wished my drydock was large enough to accommodate his boat, the Seminole; that I remember distinctly, but I can't tell you what time that was; but he told me that.

Mr. Underwood:

Well if your Honor please, I move to strike that out, on the ground that the time is not fixed. Mr. Phipps was the record owner at least of the boat, at one time; and time is important in this case. It has no probative value unless the time is fixed.

The Court:

I think I will let that go to the argument of the case, and not on a ruling to strike it. The motion to strike is denied.

Q. Well Captain Pilkington, have you told me all that you remember about your conversation with Mr. Phipps that you testify occurred prior to the time you got Simon's letter introducing Huff?

A. It would be impossible for me to tell you the conversations that I have had with Mr. Phipps; but this—

Q. Captain, I am not asking you that; I am asking you a very simple question; do you hear me?

A. I hear you, yes.

Q. I am asking you simply whether or not you have told us everything that you remember about this particular conversation.

A. The conversations that I referred to Mr. Botts, was that I had the conversations with him, but I didn't specify any time that he had said what he had.

Q. You don't remember the time that he said when he was the owner of the boats; is that a fact?

A. He has told me that several times.

Q. You don't remember the time; is that a fact?

A. No, I don't remember the date; if I did I would tell you.

Q. Now you have told us, Captain Pilkington, about a conversation that occurred when Mr. Phipps brought Mr. Riley down and introduced him as Mr. Phipps' Secretary?

A. Yes, sir.

Q. I would like to ask you now about that conversation. I think you have testified that that occurred after you received Mr. Huff's letter telling you in effect that he would no longer be in charge; is that right?

A. That's right.

Q. How long after you received that letter do you say that conversation took place?

A. That I couldn't say how long it was; it was several days after that, might have been a week or two weeks; I just don't remember.

Q. You think it was within shall we say a month, at the outside?

A. I couldn't say.

Q. Well, the letter Exhibit 39 is dated April 2, 1929; (handing exhibit to the witness); do you remember that letter?

A. Yes, sir.

Q. Now do you say that that conversation was within a week or two weeks of the time you received this letter?

A. I just don't remember how long it was; but he was there and I wouldn't have known Mr. Riley if he hadn't introduced me to him.

Q. Well Captain, I want your best recollection, that is all I want.

A. I have told you.

Q. —of the time when that conversation occurred.

A. Well I have told you all I knew.

Q. Was it in the year 1929?

A. Sure, it was shortly after that, but I can't tell you how many days.

Q. Was it during the month of April?

A. I couldn't say.

Q. Do you think it might have been in May?

A. I can't say anything at all about it; I don't remember, it has been so long ago, and I haven't seen these letters for three years, and I haven't brought anything to mind; and I really forget how many days it was.

Q. Captain, I know you can't tell me the date, or how many days; but I am trying to put a boundary to it at both ends. Now it must have been, you say, after April 2, 1929?

A. It was.

Q. Now can we not agree on some date before which this conversation took place?

A. No, I can't tell you.

Q. Was it before June?

A. That I couldn't say.

Q. Do you remember where that conversation took place?

A. I know where the conversation took place, but I can't tell you anything about when it took place.

Q. Where do you say it took place?

A. Where did—

Q. Where?

A. At my place, about thirty feet away from the corner of my building, just where he got off the boat; he generally comes up,—when he is over on the boats he comes across there where the platform is, and that's the opening of the building.

Q. And that's where this conversation took place?

A. Yes, that's where the conversation took place.

Q. Now you said yesteday I believe that it was on that occasion that Mr. Phipps told you that Riley would come once a month to look at the boats; is that correct?

A. That's right.

Q. And it was on that occasion you say that Mr. Phipps told you that Riley had been appointed to take charge of the boats; is that right?

A. That's right.

Q. Now you spoke yesterday, Captain, of a time when somebody was in a hurry to get the boat, and the captain was there, and you gave him some men to help him get the boat out in a hurry; do you remember that?

A. Yes, sir.

Q. Do you remember this letter Exhibit 41, from Mr. Riley, asking you for an explanation of a certain charge?

A. I believe, if I can remember right, Mr. Riley didn't know about the conversation between Mr. Phipps and I and Captain Bryant.

Q. And you got this letter from Mr. Riley?

A. Yes, sir.

Q. And you wrote him this letter, Exhibit 42, is that right? Did you write him that letter?

A. Oh yes, I wrote him that letter.

Q. Now have you got that particular conversation in mind with me now?

A. Yes.

Q. That's the one I am talking about. Now you told me yesterday or you told Mr. Matteson yesterday, and all of us of course, that somebody said he was in a hurry and asked for help,—men, to help get the boat ready quickly; do you remember saying that?

A. That was Mr. Phipps that said that; he was in a hurry to get the boat out.

Q. Now you say Mr. Phipps told you he was in a hurry?

A. Yes, and Mr. Bryant asked me—said the same thing, that Mr. Phipps was in a hurry to get the boat to go out on a trip; he asked me if I could get some men for him, and I done it.

Q. Now Captain, I want to read to you and call your attention to a paragraph of this letter Exhibit 42, and then I am going to ask you a question about who was in a hurry, and who said he was in a hurry. "When Mr. Phipps was here on the day the captain was in a hurry to get the boat ready to go; he asked me to let him have my men to help him, which I did." Now who was it that was in the hurry, and said so?

A. Both of them, Mr. Phipps, and Mr. Riley, said so afterwards.

Q. Do you remember that they were getting the boat ready to go on a charter at that time?

A. I don't remember anything about it; I had nothing to do with the charter business or anything like that.

Q. Do you remember that a charter was mentioned in the conversation?

A. No, sir; I don't. It might have been mentioned but I didn't pay no attention to it.

Q. You do recall, do you not, that the Seminole was chartered frequently?

A. I don't recall anything at all about the charter business.

Q. Now Captain, you referred to a conversation that occurred following, as I understand it, your letter of March 17, 1933, which is Exhibit 43, in which you said that there was a discussion between you, Mr. Phipps and Mr. Riley, about the rates being too high; do you remember that conversation?

A. Yes, sir.

Q. And I think you fixed the date of that conversation with reference to this letter Exhibit 43; will you look at that and tell me if that is the letter that helps you fix the time?

A. That's the letter I wrote before the reduction was made.

Q. And was it after this letter of March 17, 1933 that you say you had this conversation with Mr. Phipps and Mr. Riley about the rates being too high?

A. Yes, sir; it was after that.

Q. After this letter?

A. Yes, sir.

Q. How long afterward?

A. That I couldn't remember, how long it was; they were down here together.

Q. Do you remember whether it was two or three days or a week or a month?

A. I don't know how long; I merely remember the conversation as a slight conversation between the two or three of them.

Q. Are you sure that you had such a conversation as that in the early part of 1933, following this letter?

A. Let's see.

Q. That's the same letter I have just showed you, Captain, Exhibit 43 isn't it?—Yes.

A. This I wrote before the reduction of the prices, and then Mr. Phipps and Mr. Riley came down after I wrote this letter.

Q. And you don't remember how long after?

A. No, I don't remember.

Q. Are you sure that it was they who came down?

A. It was Mr. Riley and Mr. Phipps.

Q. Had you already received Exhibit 56, the letter of March 31, 1933, when they came down?

A. Well—

Q. Had you already received that letter?

A. Yes.

Q. —Exhibit 56?

A. I received that letter after I wrote—

Q. Had you received Exhibit 56 before the conversation you speak of?

A. Yes, sir.

Q. Is that right?

A. Yes, that's right, as near as I can remember.

Q. What boats did you have stored at that time, amongst those in which the Phipps family was interested?

A. I had the Seminole and the Iolanthe; I don't remember whether the two boats—the fish boat and Mrs. Guest's boat—his sister's—was in there at that time or not; I don't remember.

Q. Do you remember where that conversation took place?

A. Which conversation is that?

Q. That's the one following these two letters that I have just showed to you.

A. That there was in the same place, right where they come out of the building.

Q. How did you three get together? Whom did you meet first? Or did you meet them both at the same time?

A. I met both of them; they both came off together, and I was there on the outside where I generally stay to meet them when they come out.

Q. Had you seen them as they went aboard?

A. Yes, I had seen them when they went aboard.

Q. Did you give them the keys?

A. I think I did; I am not certain of that at all; they generally kept the boats open—or they had.

Q. Where were you when they were in the shed?

A. I was outside, right alongside of the building.

Q. Could you see into the shed?

A. Not altogether; I can't see in the boats.

Q. Do you remember where they went?

A. They went—they said they went on the Seminole and they went on the Iolanthe.

Q. They said they went on both?

A. Yes.

Q. Who said that?

A. They told me so.

Q. Both of them said that?

A. Yes.

Q. Where were three persons present at that conversation, you say?

A. Myself and Mr. Riley and Mr. Phipps.

Q. Now I would like you to tell me again what it was they said as nearly as you can remember.

A. What was said?

Q. Yes.

A. Mr. Phipps asked me—told me, that I was charging too much, and if I wanted to take fifty dollars for the storage of the Seminole, I could do so, or he would take

the boat out and take it to Palm Beach and anchor it off in front of his dock rather than pay the \$50. And that was in the middle of the season.

Q. What else was said?

A. And I told him I would let him know; and Mr. Riley turned around as they were going out and he said "Captain, do the best you can".

Q. And is that all that you now remember of that conversation?

A. That's all I remember that was said then.

Q. Captain, at the time of the fire, is it your testimony that you understood that Mr. J. S. Phipps was the owner of the Seminole?

A. He had already told me that he was the owner of the Seminole.

Q. Is it your testimony that at the time of the fire you understood that Mr. J. S. Phipps was the owner of the Seminole?

A. That's what I understood; that is what I had been led to believe, by Mr. Phipps alone.

Q. When was it that a doubt first arose in your mind as to who the real owners of the Seminole were?

A. I didn't give it a thought, because of what Mr. Phipps had told me, to take no orders from no one else but Mr. Riley, his secretary.

Q. And when was it that you first began to wonder who the real owners of the Seminole were?

Mr. Botts:

I object; there is no testimony that he has ever said he began to wonder. He is putting a thought in that has never been testified about, and I object to it.

The Court:

I think that is well taken.

Mr. Underwood:

It is cross examination, your Honor; I can test his recollection.

The Court:

Your question on cross examination must be based on facts or matters in evidence. I don't recall that. Sustain the objection.

Q. Do you keep copies of your bills?

A. No, sir; not of the bills.

Q. I may be wrong about this, Captain, but my recollection is that you have testified that all your bills were sent either to Mr. Simmon or to Mr. Riley, and were addressed either to them or to the Palm Beach Company or the Biscayne Boulevard Co.

A. I can't understand you.

Q. I am sorry; strike it out and I will try it again. I may be wrong, Captain, but my recollection is that you testified that you sent all your bills either to Mr. Simmon or to Mr. Riley?

A. I did up to the time that he told me not to.

Q. Up to the time Simmon told you not to?

A. Yes.

Q. And thereafter you sent them all to Mr. Riley?

A. No, Mr. Huff told me to continue to send it down to Mr. Simmon; and then when Mr. Riley—or Mr. Riley and Mr. Phipps came in he told me to send—not to bother with Mr. Huff any more, that he had placed everything in the hands of Mr. Riley.

Q. Now Captain, about your bills; you sent them all addressed either to Mr. Simmon or Mr. Huff or Mr. Riley, is that right?

A. I had no place—yes; I never had no place else to send them.

Q. And your bills were sometimes addressed to those men, and sometimes to the Palm Beach Company, or the Boulevard Mortgage Company; is that right?

A. That's right. I don't know how my wife addressed them; that's what I can't say.

Q. Did you ever see a bill for the storage of the Seminole that was addressed to John S. Phipps?

A. That I don't remember.

Q. Did you ever receive any payment from John S. Phipps personally for the storage of the Seminole?

A. That I couldn't say for certain.

Q. You did receive payments from John S. Phipps on some occasions for the Iolanthe, did you not?

A. Yes, sir.

Q. Isn't it a fact, Captain Pilkington, that you always billed for the storage of the Seminole and the Iolanthe on separate bills?

A. Sometimes we did and sometimes we didn't.

Q. Do you remember any occasion when you put both boats on the same bill?

A. That I couldn't say, it has been so long ago.

Q. Now Captain, yesterday you identified this check of June 24, 1935, Exhibit 59-A, as one which you received on the day of the fire; is that right?

A. Yes, sir.

Q. And you were in Fort Lauderdale at your yard when you received it?

A. Yes, sir.

Q. How did you get your mail at your yard at that time?

A. I go down in the evening, sometimes my wife goes down and gets the mail and brings it up.

Q. And do you say that this came to you by mail?

A. Yes, sir—I can't say for certain; I think it was for the simple reason that my wife was up at Palm Beach, and Mr. Simmon agreed to send it down to us.

Q. You mean Mr. Riley?

A. Or Mr. Riley—yes; Mr. Riley.

Q. But she wasn't up at Palm Beach that day, was she?

A. My wife was.

Q. On the day of the fire?

A. No, sir.

Q. She had been to Palm Beach and had seen Mr. Riley and had agreed with him on a \$60. figure, had she not?

A. Yes.

A. Isn't it a fact, Captain, that Abel brought this check with him and handed it to you?

A. That I don't know; I don't remember.

Q. Now following the return of the Seminole to your yard, which I think we all agree was about the 16th of April, I think you have said that Mr. Diley did not come down between that time and the time of the fire; is that right?

A. He hadn't come down.

Q. Now you have spoken of two visits by people from the Palm Beach Company and from Miami, the Boulevard Mortgage Co., or some such persons, on behalf of the Seminole, between the time of her return and the time of the fire; do you remember that?

A. They sent one man up.

Q. Well, one man came from Palm Beach with a letter from Riley?

A. That's right.

Q. And you say there was another man who came up with a letter from Hawkins?

A. Yes, sir.

Q. I think you testified that the man with the letter from Riley came down first, and that the man with the letter from Hawkins came next; is that right?

A. Yes, that's right.

Q. And the man with the letter from Riley took off a couple of cots, or something like that, and carried them away; is that right?

A. That's right.

Q. And I think you said that the man who came with the letter from Hawkins, took off a small package?

A. Yes.

Q. Do you remember what that man looked like?

A. I couldn't say.

Q. Isn't it a fact, Captain, that there were two men there?

A. No, sir; there was one man; there might have been one in the car that I didn't see; but one man came up.

Q. Isn't it a fact that two men went aboard that day?

A. No, sir; one man went aboard.

Q. Don't you remember a negro that was with the man who presented the letter?

A. No, sir; I don't remember a colored man at all. He didn't have no colored man with him.

Q. You don't remember what this man looked like?

A. No, sir; I do not.

Q. And you say he took a very small package off with him?

A. Pretty small package; yes, sir.

Q. How big would you say that package was?

A. Well I took it to be—

Q. Just tell me how big it was, Captain.

A. Well—

Q. As big as a cigar box?

A. No, not quite; about a third the size of a cigar box.

Q. A half-pound box of candy?

A. Well I can't say that.

Q. About a third the size of a cigar box; all right.

A. A third the size of a cigar box.

Q. And you say that is all he took off?

A. That's all I seen him; yes.

Q. And those were all the visits of anybody on board the Seminole with any letters of authority from either office, is that right?

A. Yes, sir.

Q. Now Captain, you have told us that you didn't have any printed form of contract for the storage of your boats; is that correct?

A. Not at that time.

Q. You have now?

A. I have now; yes.

Q. Were your contracts with all the boat owners, substantially the same?

A. Substantially the same. Well, I won't say that; there might be some difference in them; I can't tell. Some pay me in advance, and some didn't; so that altered the contract. But they all got the same statement.

Q. Did you undertake in your contracts to do any more for the boat of one man than you did for the boat of another?

A. No, sir; I always treated everybody the same.

Q. A part of your service was to air out the boats, and turn over the engine if the owner wanted that done, by hand; and to pump out the bilges when necessary; is that right?

A. I charge for storage; and anything—turning over the engines, keeping the water out of the boat, keeping the boats clean, I made free gratis and I never made any charge for it; unless the boat sprung a leak and we had to get more men to get it up, then I made a charge.

Q. How large a staff of men did you have, Captain, regularly employed?

A. One other man besides myself.

Q. But quite apart from whether you were paid for it or not, isn't it a fact that one of the things you did for these boat owners was to air out the boats, and turn over the engines by hand when they wanted you to, and pump out the bilges as necessary?

A. That's right.

Q. Now Captain, did you verify the Answer that was filed on your behalf in this suit? Did you read it and swear to it?

A. I don't remember it at all, it has been so long ago.

Mr. Underwood:

May we have the original of the pleadings, your Honor?

Q. Captain, I show you this verification to your Answer to the libel in this case; is that your signature?

A. That's my signature; yes, sir.

Q. Will you read that and tell me then—read that first, and then I will ask you a question about it.—Did you read this Answer before you wrote your name there?

A. I don't know whether I did or not; I don't remember.

Q. I call your attention to the second paragraph here, where it says that "as one of the respondents named in the libel in said cause, that he has read the foregoing and attached Answers, knows the contents thereof"; does that refresh your recollection as to whether you read this before you signed it?

A. I don't remember whether I read it or not, to tell the truth; I don't; I can't remember.

Q. You did sign this?

A. I signed it, all right; that's my signature.

Q. And did you swear to the truth of it?

A. I think I must have done.

Q. Now you remember that you filed in this case a petition against Mr. Phipps, in addition to your Answer?

A. Yes, sir.

Q. And did you sign that? Is that your signature?

A. Yes, sir.

Q. And did you read that and know the contents of it before you signed and swore to it?

A. I don't remember whether I read it or not; I know I signed it; that's my signature.

Q. You don't remember whether you read those papers or not?

A. I don't remember whether I did or not.

Q. And of course that was some time after the fire, was it not?

A. Yes, some time after the fire.

Mr. Matteson:

Your Honor, I think if there are any statements in the pleadings on which Mr. Underwood intends to comment, it would be only fair to call them to the attention of the witness at this time.

Mr. Underwood:

That is what I am about to do.

Q. Now Captain, in the libel filed on behalf of the people whose boats were burned, it says, as to you, in Article 7 paragraph numbered 3, "In that the said respondent failed to inspect the Yacht Seminole to determine whether the gasoline had been drained from her tanks before placing her in the shed of the yacht storage basin. That's what it says in the libel. Now in your answer to that libel, in Article 9, it says, this respondent denies "that the said respondent failed to inspect the Yacht Seminole to determine whether the gasoline had been drained from her tanks before placing her in the shed of the yacht storage basin". Is it a fact that you did inspect the Seminole?

A. No, sir; I did not.

Q. To determine whether the gasoline had been drained from her tanks before placing her under the shed?

A. I did not.

Q. Do you realize that you have denied the allegation in the libel, that you failed to do that?

A. I didn't inspect it, because I didn't have any keys to get in there.

Q. Do you realize, Captain, that you have sworn to a plea in which you have denied the charge against you, that you failed to do that?

A. That I failed to do it?

Q. Do you realize that the people whose boats were burned, have alleged that you failed to inspect the Seminole to determine about her gasoline before you put her in the shed? Do you realize that?

A. I can't say about that.

Q. And do you realize that you have denied that that is true—that charge against you?

A. No, I don't realize that at all.

Q. Well, do you now say that you did or did not inspect the Seminole to determine—

A. I didn't inspect it.

Q. Wait a minute, please: to determine whether or not there was any gasoline in her tanks?

A. I didn't inspect her; I couldn't get in the engine room.

Q. You could only tell about the gasoline in the tanks by being in or looking in the engine room, couldn't you?

A. That's right.

Q. Now Captain, in the libel there is another charge made against you, in that you failed to inspect the Yacht Seminole for fire hazards before placing her in storage with the libelants' vessels in the shed. I call your attention to your answer to that charge, where you say, this respondent denies "that the said respondent failed to inspect the Yacht Seminole for fire hazards before placing her in storage with your libelants' vessels in the shed of the yacht storage basin", and so forth. Do you realize that you have denied that you failed to inspect the Seminole for fire hazards?

A. I don't deny that at all; I inspected every inch of that boat outside of the engine room; and that I couldn't get in because I didn't have any key.

Q. Did you inspect her for fire hazards?

A. I inspected her all the way through.

Q. For fire hazards?

A. Well there wasn't—for fire hazards or any other kind of hazards.

Q. And did you satisfy yourself there was no fire hazard?

A. I satisfied myself as far as I could see that there wasn't no fire hazards anywhere where I went in the boat.

Q. How many times did you go aboard the Seminole and inspect her from the time she arrived there on the 16th of April until the day of the fire?

A. Just almost every other day; I can't remember that.

Q. And you were aboard of her from time to time?

A. From time to time; yes, sir.

Q. Two or three times a week?

A. Well, oftener than that.

Q. Oftener than that?

A. Sometimes we went on every day, and other times we didn't go on, because I had the boat for eight years, and I was well acquainted with the boat.

Q. You thought she was a good boat?

A. I think she was a good boat.

Q. You saw nothing wrong with her prior to the time of the fire?

A. I didn't see anything wrong with her at all.

Q. You had been in her engine room on previous occasions?

A. Just looking in, but I wasn't in altogether, because I never needed the engines turned over; they told me not to.

Q. And do you mean to tell me that you were never inside her engine room?

A. Oh I was in the engine room but not for any inspection; just to see if there was any odor in there or not; bilge gas or gasoline gas.

Q. And had you ever smelled any such in her engine room?

A. Never in that engine room; no, sir.

Q. And had it been your practice in previous years to go into that engine room and inspect it for bilge gas and gasoline odor?

A. I always go in the engine room, I always did there too.

Q. During all the time that she was in your yard?

A. The whole eight years; yes, sir; I go in every boat in the place.

Q. Now you testified yesterday as I recall it, that you did not put the boat under the shed until you got the keys; is that right?

A. That's right.

Q. And you didn't want to put her under the shed until you had had an opportunity to make sure that she was aired out?

A. I aired it out myself.

Q. Now just what did that consist of—that airing out?

A. Opening all the windows, and the doors, and one hatch.

Q. Which hatch was that?

A. That was the hatch over the engine room—that is a ventilator; it was a glass ventilator over the top; it wasn't where they went down in.

Q. You mean the skylight, Captain?

A. Yes, sir; the skylight.

Q. It comes up to a peak?

A. Yes.

Q. And it is made of a metal frame—

A. That's right.

Q. A metal frame with glass panes in it?

A. Yes.

Q. And you opened that?

A. No, I can't say that I did open that.

Q. You opened windows?

A. I opened all the windows down below.

Q. Did you open the windows in the alleyway that runs past the engine room?

A. I opened every window there was along the side of the boat, each side.

Q. Every window on both sides?

A. Yes, outside of the engine room, and I couldn't get in there to do that.

Q. Did you try?

A. Well, I didn't have any key.

Q. Did you try to get in the engine room?

A. Well there is no way to get in the engine room only through a little window where Capt. Abel went into, and I don't remember that window.

Q. You don't remember that window?

A. No, sir; I don't remember that window.

Q. What did that window look like, Captain?

A. I couldn't tell you.

Q. What is your recollection of it?

A. No, sir; I can't recollect that window at all.

Q. Was it a glass window?

A. I couldn't say whether it was a glass window, or whether it was a board window.

Q. You had had that boat at your yard from time to time since 1928, is that right?

A. Yes, sir.

Q. And you had been through that boat a great many times?

A. Yes, sir.

Q. And do you still say that you did not know about that window?

A. I still say that I don't remember that window; if I did I would tell you so.

Q. Captain, I understand that you now say you don't remember the window?

A. I don't remember that window.

Q. Did you know about that window at that time?

A. No, sir; I did not.

Q. You deny that?

A. Well, because I had no occasion to.

Q. Now you have told us, Captain, that you got some keys with a letter dated April 20, 1935, which is Exhibit 54, and you said that there were two keys; is that right?

A. Yes, sir.

Q. Between the time you got those keys, and the time of the fire, did you have any conversation with Mr. Hawkins?

A. No, sir. I didn't have any conversation at all.

Q. Did you have any conversations with Mr. Phipps?

A. No, sir.

Q. With Mr. Riley?

A. No; Mr. Riley wasn't there.

Q. Did you have any conversation with him between the time you got the keys, and the time of the fire?

A. I had a conversation over the wire, or over the phone, before the fire.

Q. That was before you got the keys, wasn't it?

A. Yes, sir.

Q. I am talking now, Captain, about between the time you got the keys and the time of the fire. You have told me before that nobody came down to look at the boat. I want to know whether you had any conversation with anybody about the boat by telephone or otherwise.

A. No, sir; I don't remember; there is so many comes in there and asks questions; I don't remember who they were or what they were.

Q. But you don't remember any such conversation now?

A. I don't remember any conversation.

Q. I assume you have looked through your files to find the correspondence that you could find between yourself and anybody on behalf of the Seminole, around that time. Did you have any correspondence with anybody between the time the keys were received and the time of the fire, about the Seminole, except your letter acknowledging the keys?

A. That I don't remember. I acknowledged the keys from Mr. Hawkins, because that's where I was told the keys were, by the man that came up there from there.

Q. But after you did that, did you have any other conversation?

A. I just don't remember whether I did or not.

Q. Did you have any other correspondence?

A. I don't remember.

Q. How soon after you got the keys did you go aboard the boat?

A. That very day.

Q. How soon after you got the keys did you write the letter acknowledging them?

A. That I couldn't say.

Q. Had the keys been left with you in previous years?

A. Yes, sir.

Q. How many keys had been left with you in previous years?

A. Quite a number of years; two bunches.

Q. Was the key to the engine room hatch left with you in previous years?

A. Always; yes, sir.

Q. But you say that in this year you only got two keys?

A. I only got the two keys.

Q. You got those keys two months before this fire, did you not, Captain?

A. That I can't say, whether it was two months or not.

Q. You received the keys on or before April 23rd, did you not?

A. Yes.

Q. Showing the witness Exhibit 61. Now in that intervening two months you didn't write anybody any letter asking for more keys, did you?

A. I don't remember whether I did or not.

Q. And you didn't call up Riley or Hawkins or anybody else asking for more keys, did you?

A. I told Mr. Riley that I didn't have the keys, and I was waiting for him to come down here, every day.

Q. You told me just a few minutes ago that that conversation was before you got the keys. Isn't it a fact, Captain, that from the time you got those keys, which you acknowledged on April 23rd, you neither wrote nor asked orally, anybody, for those keys?

A. I don't remember anything about that. All I know, I had the keys to go in the boat and open up what part the keys would fit.

Q. You can't point to any letter or any conversation in which you asked for another or any more keys, can you, Captain?

A. No, because I expected Mr. Riley down, every day.

Q. But you didn't call him up and you didn't write to him during that entire period of sixty-odd days, did you, Captain?

A. No, I did not, because he said he would be down in a few days.

Q. He said that before you got the keys?

A. Yes, he said he would be down in a few days, and I expected him there.

Q. Where are those keys now?

A. I don't know.

Q. What did you do with them?

A. I give them to Capt. Abel when he went on the boat.

Q. And you know that he got into the engine room with those keys, don't you?

A. I watched him when he went past, and he had Mr. Thomas to stoop down to open the hatch, and whether they did not open it; and then he went along on the deck, and went down in the aft part of the room, and went up to the engine room; that is what I understand, but I didn't see Capt. Abel after he went inside of the door.

Q. You have every reason to believe that Capt. Abel got into the engine room, haven't you?

A. (Witness spreads hands.)

Mr. Matteson:

I object to that, if your Honor please.

The Court:

Well, he hasn't answered. What do you say on that, Mr. Underwood?

Mr. Underwood:

I won't press the question.

Mr. Betts:

I won't object to it, either.

The Court:

It has been objected to, and withdrawn, now.

Mr. Underwood:

You can ask him that question later on.

Q. Captain, I think you agree that it's perfectly proper to store a vessel with gasoline in her tanks, if her fittings are tight, don't you?

A. Yes, sir. I would rather have a full tank than an empty tank.

Q. Do you remember that once you put 200 gallons of gasoline in the Seminole while she was laying at your yard, and that she lay there some 45 days with the gasoline in her?

A. That was because they wanted to go away on a trip.

Q. Do you remember that.

A. I don't remember the day, no; but I know they got some gasoline, but how much I don't know.

Q. Do you remember that on December 30, 1928 you supplied the Seminole with 200 gallons of gasoline, and that she lay in your shed until the 15th of February 1929?

A. Outside.

Q. With that gas.

A. She lay outside; she didn't lay in the shed.

(Brief informal recess was had.)

Q. I think you said, Captain, that you were getting into your small boat when the first explosion occurred; is that right?

A. Yes, sir.

Q. Is that a rowboat?

A. Rowboat.

Q. Where was the rowboat with reference to the position of the Seminole?

A. About twenty feet off the Seminole, alongside.

Q. Was there a catwalk there in the shed?

A. Yes, in the center.

Q. You walked down the catwalk and got in your boat?

A. No, I got down the ladder and went into my boat; small rowboat.

Q. Down the ladder from the catwalk down to the water?

A. Yes.

Q. How high was that catwalk?

A. About—well from high water it was about eighteen inches—from high water.

Q. Do you remember how the tide was at the time of the first explosion?

A. That I don't remember.

Q. This inspecting of boats that you did, did you do all that personally, or did your man help you?

A. I done it personally.

Q. Did your man go around the boats too?

A. No, sir.

Q. He never went around the boats?

A. No, sir, only to pump out the water; colored man; just to pump out the water.

Q. If in the course of your inspections you found some water in the bilges of some boat, you would send him to do the pumping; is that what you mean?

A. Yes, sir.

Q. And that was done with the boat's pump?

A. Beg pardon?

Q. How was that done?

A. By hand.

Q. By hand?

A. Yes, sir.

Q. No operation of any motor?

A. No, sir.

Q. Well did all these boats that were in your shed lay up against a catwalk, or did you have to climb from one to another?

A. Some of them were along the walk, and some over on the other side, alongside of it.

Q. And sometimes in order to go on the Seminole you might have to climb over two or three boats?

A. No, you would get in a rowboat and go over to it.

Q. Row over to it?

A. Yes, sir.

Q. How did you get aboard the Seminole from a row-boat?

A. Easy.

Q. Over her stern?

A. Yes, sir.

Q. It was quite a climb, wasn't it?

A. No, it wasn't so much.

Q. How many feet would you have to climb up over the rail of the Seminole?

A. I should say about three to four feet; that was nothing.

Q. Three to four feet climb was nothing? You are pretty spry, are you, Captain, for your years?

A. That don't make any difference.

Q. You can climb three or four feet without trouble, can you?

A. Sure.

Q. Maybe a little more?

A. I have done it.

Q. You wouldn't have any difficulty climbing over a three-foot sill from the window into the engine room, would you, Captain?

A. No, because there wasn't no way to stand, only by getting on another boat, and go to that window, providing you went inside; if you went inside—

Q. I am talking about the window from the alleyway into the engine room.

A. From where?

Q. From the alleyway on the starboard side of the boat, into the engine room.

A. From the engine room?

Q. From the alleyway on the starboard side of the boat, into the engine room.

A. There was—that was on the inside of the boat.

Q. If there was a window there, and it was only three feet above the floor of the alleyway, it wouldn't be any trick for you to climb over that three-foot window, would it?

A. No, but I never had no call to.

Q. Were you out in the river in front of the basin when the explosion occurred?

A. No, sir; I was in under the shed.

Q. You were under the shed?

A. Yes, sir.

Q. Were you going to go aboard the Seminole yourself?

A. No, sir; I was going on my dredge; I was dredging at the time?

Q. Where was your dredge?

A. On the outside of the building. I had dredged all under the Seminole, and for 150 feet up, and I was going on the outside and continue.

Q. You were rowing toward your dredge, were you?

A. Yes, sir.

Q. Were you facing the shed or away from the shed?

A. That's on the side of the shed.

Q. Well from where you were when you heard the explosion, how much of the shed could you see?

A. I didn't see much of it; I didn't see much of it.

Q. You couldn't see much of it? You mean that—

A. I was down at the stern of the boats; there was a boat laying there, a houseboat, right where I got on, and it was very high,—about as high as the Seminole, almost; and I couldn't see out there.

Q. Was that houseboat between you and the Seminole?

A. Yes, sir.

Q. When the explosion occurred?

A. Yes.

Q. Could you see the Seminole?

A. I could see about forty feet of it; the stern.

Q. Forty feet of her stern?

A. Yes.

Q. Well then that wouldn't be as far as her stack, would it?

A. Oh my no.

Q. You couldn't see her stack, and you couldn't see forward of her stack, is that right?

A. Yes, sir.

Q. What was the first thing that you did when the explosion occurred?

A. I jumped up on the walk and run back, and was undoing the lines to push out a boat that was laying alongside of it, and I looked up and my wife called to me and said "There is a fire over the top of your head": and by that time the breeze had blew the sparks and everything all the way down, everything was on fire; and there was a flame went over the top of the walk and caught on the boats on the other side, and I ducked under the flames and went on out.

Q. You got out along the catwalk?

A. Yes, sir.

Q. You had a narrow escape yourself? The fire spread very rapidly?

A. It spread so quickly you couldn't see it; it was all in one blaze in no time; didn't have time for nothing, the heat was so great.

Q. As I visualize your shed, Captain, the Seminole was on the side furthest from your house; is that right?

A. Yes, sir.

Q. So that the fire as it spread was spreading toward your house?

A. The fire spread the full length of it, and all around it, at the same time; it blew all around it; it blew the cabins off of the three boats.

Q. There were other explosions following that on the Seminole?

A. I don't remember—no, not on the Seminole; no, sir.

Q. You mean you only heard one explosion on the Seminole?

A. That is all.

Q. And did you hear other explosions after that?

A. I didn't, but somebody—some others told me so, but I didn't myself.

Q. Well, we can't take what others told you, Captain.

A. No, I can't tell you.

Q. You don't remember hearing but the one; is that right?

A. Only the one, is all.

Q. Did you examine the Flamingo between the time of the first explosion and the time you had to leave the shed because of the fire?

A. Yes, sir; I examined that; I went all over all the boats.

Q. No; maybe you didn't understand me. After the explosion occurred, and before you had to leave the shed, did you look at the Flamingo?

A. I looked up and seen half the cabin going.

Q. Was she burning then?

A. Yes, sir.

Q. You mean half the cabin was afire?

A. Half the cabin was blowed off and was afire.

Q. When you say, blowed off, you mean it was afire?

A. Yes, it was blowed off; the explosion from the Seminole blew the front of the Seminole all to pieces, and then blew the half of the cabin off of the Flamingo.

Q. By the front of the Seminole, you mean the bow? The engine room is up nearer the bow of the boat than the stern of the boat?

A. I don't know exactly the distance.

Q. Captain, I show you respondents' Exhibit A for identification; does that look like the Seminole, to you?

A. Well it looks something similar to the deck plan; it is similar.

Q. Now tell me what you saw.

A. I seen the explosion come up, and all of this was blown off.

Q. Indicating from the engine room all the way to the bow.

A. Yes, sir.

Q. You mean the deck was blown completely off?

A. Yes, sir.

Q. Did you notice what happened abaft the engine room,—whether anything was blown up back there?

A. There was nothing back here, because the wind was blowing in the front of the building, up the river.

Q. And she was stern-out?

A. Yes; stern out.

Q. So the wind was blowing toward the bow?

A. Yes, sir.

Q. Well I want to get this straight, Captain; do you mean that the force of the explosion blew up her entire deck from the after part of the engine room to her bow?

A. It blew up—no, it blew up this here, was, all I understand, was steel; I am not certain of it.

Q. Indicating over the engine room. All right now, go on.

A. And then this here blew up here.

Q. Excuse me, Captain, but "this here" doesn't mean anything unless I interrupt you and tell the reporter what you are pointing to; so if you could say where you mean, it would be clearer; and I think counsel might like that better than for me to try to interpret what you say.

A. The explosion as I seen it from where I was a standing, blew up here and kind of spread.

Q. Indicating above the engine room.

A. It spread after it got up.

Q. What was it that spread? You mean there was—

A. The flame.

Q. The flame.

A. Yes.

Q. And the flame swept forward very fast, is that what you mean?

A. Yes.

Q. That is what you meant when you said it blew the forward end of the boats off?

A. Yes, sir.

Q. Who turned in the fire alarm, Captain?

A. Beg pardon?

Q. Who turned in the fire alarm?

A. My wife.

Q. And how long after the explosion was it that the fire department arrived?

A. I think it was about five or six minutes.

Q. They got there very fast?

A. They got there very quick.

Q. How far was the fire department from your shed, approximately?

A. They got as close to the shed as the heat would let them; and that there was about—I don't think it was as wide as this room.

Q. Well, how far away was the fire department? I mean how far did they have to travel in that five or six minutes, to get to your place from Lauderdale?

A. Fort Lauderdale? Yes, sir.

Q. And about how far?

A. About three miles.

Q. About three miles from Fort Lauderdale?

A. Yes, sir.

Q. What fire protection did you have at your shed?

A. Well I had fire extinguishers about that high (indicating about 30 inches); I had six of them.

Q. Did you have any water?

A: Yes, sir; I had—I have water, all right.

Q. Had sprinklers?

A. No, sir, I have no sprinklers.

Q. Have any fire hydrants?

A. No, I had no fire hydrants.

Q. Have any Foamite?

A. Well I don't know whether you might call them fire extinguishers Foamite or not.

Q. You don't remember what type they were?

A. I don't remember.

Q. But you had six fire extinguishers, and the water in the river?

A. Yes, sir.

Q. Is that right? And that is all the fire protection you had? That is all the fire protection you had?

A. That's all the fire protection I have; because I never had nothing to happen to me in forty five years.

Q. Captain, I think you said yesterday that you remembered that the Seminole first came to your yard on June 14, 1928; is that right?

A. Somewheres around that time.

Q. Well, how did you pick that particular date?

A. Well, I had to enter in the book, I think it was the 11th; but I wouldn't say for certain whether it was that particular date or not. It might have been there before that, and might have come after that. That I couldn't say. We generally booked from the 15th; sometimes we do, and other times we give the owners of the boat the difference. Sometimes we charge—

Q. Have you refreshed your recollection from a book or something to get that date, of June 11, 1928?

A. Just by the books, that is all.

Q. You don't remember that independently?

A. No, sir. Somewheres June the 11th; that's what I said.

Q. Was there any doubt in your mind, Captain, prior to the fire, as to who the real owner of the boat was—Seminole?

A. Before the fire?

Q. Up to the time of the fire.

A. I always was under the impression that was Mr. John S. Phipps.

Q. Was there any doubt in your mind about that?

A. No, there wasn't any doubt at all.

Q. I show you a letter that bears date of July 5, 1935, and ask you if that is your signature?

A. Yes.

Q. Is that your signature?

A. Yes, that's my signature.

Q. Did you write that letter?

A. Well there is some question after the fire.

Q. Did you write that letter?

A. Yes, sir, I wrote that letter.

Mr. Underwood:

Will you mark that, please.

Mr. Matteson:

No objection.

(Said letter was admitted in evidence and marked as respondents' Exhibit I.)

Q. Captain, if there was no doubt in your mind as to who the real owner of the boat was, but do you explain your question in this letter?

A. That was after the fire, wasn't it?

Q. Yes. July 5th.

A. Well it was a question in my mind after the fire, because Mr.—I asked Mr. Riley when he was going to fake the hull away, and he says "I have got to leave it there until the insurance matters are fixed up".

Q. Was there a doubt in your mind at the time you wrote this letter, as to who owned the Seminole?

A. It was hearsay; not personal.

Q. Now Captain, when the boat was laid up, she was left there by Baker and the engineer and a couple of other fellows on the boat; do you remember that?

A. Yes, sir.

Q. What time of day do you say they left?

A. I don't remember what time of day they left.

Q. You haven't any recollection about that?

A. No, I don't have any recollection.

Q. Do you remember having a conversation with Capt. Baker at that time?

A. On the boat?

Q. Yes.

A. I was down in the yard alongside of my brother-in-law.

Q. Were you on the boat?

A. No, sir.

Q. At that time?

A. No, sir.

Q. You didn't go on the boat at that time?

A. No, sir.

Q. Do you remember a conversation with Capt. Baker?

A. Yes, I remember a conversation.

Q. Isn't it a fact that on that occasion Capt. Baker told you that the windows in the alleyway alongside of the engine room, and the window on the port side of the engine room, were open, and asked you to be sure and close them if it rained before you got the boat under the shed?

A. He didn't say anything of the kind; I will say that right now; he did not say anything of the kind; that is not true.

Q. When you first went aboard the Seminole and went through that alleyway, how did you find the windows on the outside of the boat?

A. I found them up and I put them down.

Q. You found them open?

A. No, sir, I did not; I found them shut, and I put them down myself.

Q. You mean they were the type of window that went down in order to open them?

A. Some of them were, and some were sliding.

Q. I am talking about the two windows in the alleyway that ran past the engine room. Captain, I show you Exhibit A—I think it is; and call your attention, in the lower deck, to two windows in the alleyway that passes by the engine room.

A. Yes.

Q. How did you find those windows when you first boarded the Seminole after April 16th?

A. All on that side was closed up.

Q. Every window in the boat?

A. Yes, sir.

Q. On that deck, was closed?

A. Was closed.

Q. You had known Capt. Baker for years, hadn't you?

A. A few years; yes, sir.

Q. And you had known the engineer for some time, had you not?

A. No, I only knew him once in a while; he came down to the yard; I didn't know him personally.

Q. Do you know whether they knew how to prepare a boat for lay-up, safely?

A. Which?

Q. Do you know whether they knew how to prepare a boat safely for lay-up?

A. I think they did; I think Capt. Baker,—he had a boat of his own, and I know he ought to know how to lay a boat up.

Q. You refer to the Molly-O?

A. Molly-O.

Q. She had been stored at your yard?

A. Yes.

Q. She is a houseboat type, somewhat like the Seminole, isn't she?

A. She is a houseboat.

Q. And so was the Seminole, wasn't she?

A. Houseboat.

Q. Now on the day of the fire when Abel came down, he had a conversation with you, isn't that right?

A. Yes.

Q. And he gave you that letter of authority to go aboard the boat, from Riley?

A. Yes.

Q. Was anybody else present at that conversation?

A. Mr. Thomas was some distance off, but there was nobody alongside of him.

Q. John S. Phipps wasn't there, was he? J. S. Phipps was not there, was he?

A. No, he wasn't there.

Mr. Underwood:

If your Honor please, I move to strike out what this witness said yesterday about Abel's saying that he had been instructed to get some fishing tackle to take on a trip that J. S. Phipps was going to take to Bimini; on the ground that J. S. Phipps was not there, and there is no connection between Abel and J. S. Phipps.

Mr. Matteson:

If your Honor please, the testimony was admitted yesterday without any objection being made at all at the time; and furthermore it seems to me that it comes just within the ruling that your Honor made with respect to the conversation that occurred on board the Seminole between the engineer and young Bryant, which was brought out by Mr. Underwood on the stand, to which

we objected; and your Honor ruled it was part of the occurrence and that therefore it was admissible.

(Discussion and arguments by counsel.)

The Court:

The ruling of the Court is that—well, before I announce my ruling I will state this; I want you all to have in mind what I have in mind, whether I am right or wrong. The documentary evidence,—that is the note that was taken by Capt. Abel, signed by Mr. Riley, in and of itself did not authorize Capt. Abel to make statements either as establishing his agency of Mr. Phipps, or as making statements that would be binding on Mr. Phipps: that instrument in and of itself. In other words I view that as a document naming an individual,—for instance Mr. Bryant the reporter; if Mr. Bryant had never been heard of in this transaction before, no connection with Mr. Phipps, and he is the nominee of a note signed by Mr. Riley, to get some equipment, he goes there and he makes some statement while there in the presence of Mr. Pilkington, but not in the presence of Mr. Phipps, I don't think Mr. Bryant's statement would be competent to establish his purported agency of Mr. Phipps. Neither do I think that if—well I think that is sufficient to go that far. It is not competent to establish agency of Mr. Phipps by what Mr. Bryant said at that time. Now then I view the name Abel in there just as if it was Bryant—I mean the Court reporter Bryant; I don't want to get confused with the witness Bryant.

Now then with that in view, I think that this motion should be denied, subject however to the record connecting up two matters; first, that what Mr. Riley did was binding on Mr. Phipps,—which is the general matter that we had under consideration when these general objections were made and the general rulings made: sec-

only, as to whether, subject to the whole record showing by other evidence than this particular document, that Captain Abel was the agent of Mr. Phipps, and authorized to make statements binding on him. So that will be the ruling of the Court.

(At 12:38 p. m., Court recessed until 2: o'clock p. m. of the same day.)

March 17, 1939—2:00 o'clock P. M.

Hearing resumed pursuant to recess.

Appearances same as heretofore noted.

620 Thereupon GEORGE J. PILKINGTON, a witness produced in behalf of the Libelants, resumed the stand and was examined and testified further as follows:

Cross Examination (Cont'd.)

By Mr. Underwood:

Q. Captain, I think you testified yesterday that both Thomas and Abel were smoking when they came down on the day of the fire and you asked them to stop and they did stop, is that correct?

A. That is right.

Q. They threw their cigarettes away before they went into the shed?

A. Yes.

Q. I think you said that you knew Abel only slightly?

A. Slightly, yes.

Q. And that prior to the day of the fire your knowledge of him was in connection with work that he was doing from time to time on the Iolanthe, is that right?

A. The Iolanthe, and he came there to get the Dorothy I think once.

Q. You said something about having observed Abel smoking while he was working on the Iolanthe; is that the fact?

A. Yes.

Q. And where was the Iolanthe at that time?

A. It was laying in near the boardwalk alongside the Seminole.

Q. Under the shed?

A. Under the shed.

Q. You spoke to him about that?

A. Yes.

Q. And he promised to stop?

A. He promised to stop.

Q. And was anybody else present when you saw him smoking on the Iolanthe?

A. I don't remember whether there was or not.

Q. I think you testified that either on the day of the fire or very soon thereafter you had a conversation with Garry Miller, is that the fact?

A. He was there the day of the fire.

Q. And you had a conversation with him?

A. Yes.

Q. He is your Fort Lauderdale attorney?

A. Yes.

Q. And he was at that time?

A. Yes, sir.

Q. You said something this morning about a government inspector. Do you recall mentioning that this morning?

A. Inspector?

Q. A government inspector who came down to look at something.

A. He came in the building every now and then.

Q. What government inspector do you refer to?

A. Well, the Custom House.

Q. An inspector from the United States Customs House?

A. Yes.

Q. When did that inspector come around?

A. He came there any old time; he didn't have any specified time to come.

Q. Now and then he would come around?

A. Yes, now and then he would come along.

Q. Did that inspector inspect the condition of the boats?

A. He didn't go on the boats to inspect the boats.

Q. He just confined himself to asking questions of you, is that right?

A. Yes, sir.

Q. Was Mr. Phipps ever present at a time when the government inspector asked you any questions about the Seminole?

A. No, sir, he was never there.

Q. Do you remember on the afternoon of the fire and while the fire was still burning, that Mr. Hawkins came to your house?

A. Yes.

Q. And do you remember that Mr. Riley came to your house?

A. Yes.

Q. And do you remember that Mr. Webber was with Mr. Hawkins?

A. There was some men with him but I don't know who they were.

Q. Do you remember that the Chief of the Fire Department of Fort Lauderdale conversed with you in your house?

A. He was there.

Q. Do you remember whether all four of these men were with you at the same time?

A. I don't remember whether they were or not; it is so long ago that I can't remember it.

Q. Did you have a conversation with Mr. Hawkins at that time?

A. Slightly.

Q. Did you have a conversation with Mr. Riley?

A. I couldn't remember—who was Bradley?

Q. Riley.

A. Yes, he was with Mr. Hawkins I think.

Q. During that conversation—do you remember that Mr. Webber was present during that conversation?

A. Who?

Q. Webber?

A. I don't know; I don't know him.

Q. Do you remember a man who came down shortly after the 16th of April and got a package and you asked him to send you the keys; you remember that man, don't you?

A. After the fire you mean?

Q. No. The boat reached your yard about the 16th of April?

A. Yes.

Q. And three or four days after that a man came down with a letter from Mr. Hawkins, which letter you have identified?

A. Yes.

Q. Do you remember that man?

A. I remember him but I couldn't recognize him if I saw him.

Q. Do you remember whether or not he was present on the afternoon of the fire when you had a conversation with Mr. Hawkins and Mr. Riley?

A. I don't remember whether he was or not.

Q. Do you remember the substance of that conversation?

A. I don't hardly know the conversation, only about the fire starting and the way it started and that sort of thing. I didn't know anything about it.

Q. Do you remember what you said about the reason for the fire starting?

A. I told him just what I had got from Mr. Miller and Mr. Botts.

Q. Do you remember discussing whether or not there was any gasoline in the tanks of the boat?

A. I didn't discuss that at all.

Q. Isn't it a fact, Captain, that on the afternoon of June 24, 1935, at or near your house, you said in substance to all in the presence of Mr. Roy Hawkins, "I cannot account for the fire. I know there was no gasoline in the boat because I had been in her engineroom and attempted to run the generator within the month but couldn't do so for lack of gasoline?"

A. I didn't say anything of the kind to them or to anybody else.

Q. Did you make such a statement on that afternoon to Mr. Riley or in his presence?

A. Not anything of the kind.

Q. Did you make such a statement that afternoon to Mr. Webber or in his presence?

A. No, sir; not to him or anyone else.

Q. Do you remember the name of the chief of the Fire Department of Fort Lauderdale who was there that afternoon?

A. I remember who he was.

Q. Do you remember his name?

A. No, I don't remember his name.

Q. Do you remember the man?

A. Yes, but I forgot his name.

Q. Isn't it a fact that on the afternoon of June 24, 1935, at or near your house, you said, in substance, to the Chief of the Fire Department, or the man who was

there in charge of the Fire Department that day, "I cannot account for the fire." I know there was no gasoline in the boat because I had been in her engine room and attempted to run the generator within the month but couldn't do so for lack of gasoline."

A. I didn't say anything of the kind to him or to anyone else, because I never run the generator the whole eight years we had the boat stored there.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Botts:

Q. Captain, sometime this morning you made the statement in substance to the effect that you would rather have the gasoline tanks full of gas than empty. Just what do you mean by that?

A. Well, there is no room—if a gasoline tank is full there is no room for gas on the top.

Q. You mean there would be no room for vaporized gas on the top of the gasoline?

A. Yes, sir.

Q. Now supposing a gasoline tank was entirely empty except for air, there would be no danger there, would there?

A. That depends on whether the tank has been aired or not.

Q. I see. If the gasoline tank had never been filled with gasoline, there would be no danger in it, you say?

A. No.

Q. Can you explain why a gasoline tank that was empty, as you described it, might be dangerous? What do you mean by that?

A. Well, there is always a vapor which stands by any galvanized iron; sometimes it disappears and sometimes

it don't, but what it has goes down to the bottom of the tank and stays there.

Q. That is, Captain, providing gasoline had once been in the tank, is that right?

A. Yes, sir.

Q. Now you spoke about some government inspector. Do you know as a matter of fact from what particular branch of the Service these men came?

A. Just the inspectors who came around and inspect the boats as to numbers and one thing or another; that's all.

Q. Do you know from what Bureau they came?

A. No; they never said.

Mr. Botts:

Now, Mr. Underwood you produced a number of checks here this morning. I am wondering if you have a check drawn by the Palm Beach Company, or upon its bank account, dated sometime probably in the month of May, 1931, in the sum of \$59.20, payable to Captain Pilkington?

Mr. Underwood:

Offhand, I cannot tell you. Do you want me to take the time now and see?

Mr. Botts:

Yes, and while you are looking for that one look for one probably in August, 1931, for \$118.20.

Mr. Underwood:

Both Palm Beach Company checks?

Mr. Botts:

Yes, as far as we can tell. They were charged in the deposit slip as from the Palm Beach Company, and I assume they were.

The Court:

Do you need them in connection with the interrogation of Captain Pilkington?

Mr. Botts:

Yes, your Honor. Let me have all the checks the Palm Beach Company paid Captain Pilkington, because I am going to ask for them one by one. Any check that you may have with Captain Pilkington's indorsement on it by whatever company drawn, and if by an individual, by whatever individual drawn.

Mr. Underwood:

I find two checks of the Palm Beach Company; one dated May 21, 1931, in the sum of \$59.20, to the order of Captain George J. Pilkington, which I hand you now.

Mr. Botts:

Thank you.

Mr. Underwood:

I also find a Palm Beach Company check dated August 12, 1931, in the sum of \$118.20, drawn to the order of Captain Pilkington.

Mr. Botts:

They are marked paid. I wonder if you have the paid bills for these two checks?

Mr. Underwood:

Don't you think you had better have these identified as we go along?

Mr. Botts:

As soon as I get those bills we can do that, Mr. Underwood.

Mr. Underwood:

I find two bills on the letterhead of Captain Pilkington, both dated April 30, 1931, one which includes the Yacht Iolanthe in the gross sum of \$60.40, but that has been marked out in part, leaving the sum of \$34.20; and another bill (both of these being addressed to the Palm Beach Company) for storage on the Houseboat Seminole in the sum of \$25.00, making \$59.20, the amount of the first check. I also find two bills, one dated June 30, 1931, addressed to the Palm Beach Company, in the sum of \$43.20, for storage on the Iolanthe and the fishing boat K-121215, which we have called heretofore the Clip; and the other bill is dated July 31, 1931, addressed to the Palm Beach Company by Capt. Pilkington for storage on the houseboat Seminole in the sum of \$75.00, and these two I think add up to \$118.20.

Mr. Botts:

I am sure they do; I added them once.

(By Mr. Botts):

Q. Now, Captain, I show you a check dated August 12, 1931, in the sum of \$118.20, payable to your order. Is that your indorsement on the back of it?

A. Yes, sir.

Q. I hand you two bills marked "paid" and I will ask you to examine the check and the bills and state whether or not there is any relationship between the check and the bills?

A. That is the two.

Q. What relationship, if any, was there between the check and the two bills; did they have any connection?

A. That check covers both bills.

Q. Was that check cashed by you?

A. Yes, sir.

Q. What do you mean when you say it covers both bills?

A. It covers the amount of both of these bills.

Q. This check paid these bills, is that what you mean to say?

A. Yes, sir.

Mr. Botts:

I suppose that technically, representing a defendant, I am in the position that Mr. Underwood was this morning, so I will have to defer offering these until a later time.

The Court:

Have them marked for identification.

Mr. Botts:

Will you mark these for identification, Mr. Colman?

(Thereupon the check and paid bills above referred to were marked Pilkington's Exhibits 1, 2 and 3, respectively, for Identification.)

Q. I hand you check dated May 21, 1931, drawn by the Palm Beach Company in favor of Captain George J. Pilkington in the sum of \$49.20, and will ask you if that is your indorsement on the back of that check?

A. Yes.

Q. Was the money represented by that check paid to you?

A. Yes.

Q. I, now hand you two received bills made out to the Palm Beach Company, one dated April 30, 1931, in the sum of \$25.00, marked "storage houseboat Seminole"; and another bill dated the same date against the Palm Beach Company in the sum of \$34.20 against the yacht Iolanthe, and I will ask you if that check has any relationship to these two bills?

A. That check paid both of these bills.

Mr. Botts:

We ask that this be filed for identification. We will mark the \$34.20 check number 4 the \$25.00 bill number 5 and the \$59.20 check number six.

(Thereupon check for \$34.20, dated May 21, 1931 and receipted bill dated April 30, 1931, in the amount of \$25.00 and receipted bill dated April 30, 1931 in the amount of \$59.20, were marked, respectively, Pilkington's Exhibits 4, 5 and 6 for Identification.)

Mr. Botts:

Now, Mr. Underwood, I have asked you if you have any other checks bearing Captain Pilkington's indorsement here, as I would like to interrogate him about any supposed indorsements on those, and I would now like for you to let me have the checks and the bills.

Mr. Underwood:

I want it understood that these things are produced pursuant to the call of the other side, so that my rights will be preserved. I will be pleased, at my earliest convenience, to give you all of the bills that I have of Mr. Pilkington and all of the canceled checks which I have indorsed by Captain Pilkington. I have given you all such that I have been able to find from the Miami office and the Palm Beach office.

(By Mr. Botts):

Q. Captain Pilkington, I understood you to say this morning that your wife, Mrs. Pilkington, kept your books?

A. Yes, sir.

Mr. Botts:

That is all, Captain.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Captain, one or two more things I want to ask you: In what year did you build your drydock?

A. I dug it out but I didn't get it built.

Q. In what year did you do that?

A. I dug it out I think three years before I started up there; I can't tell you exactly because I done so much work around there that I just can't remember.

Q. Was it a long time ago or was it recently?

A. That was a long time ago.

Q. Now you said something in connection with telling us about your talk with Mr. J. S. Phipps that he would take the boat away. Now can you tell us as nearly as you can just the words that he used? Do you understand me?

A. Not quite I don't.

Q. Captain, you told us about a conversation that you had with Mr. Phipps about the rates of storage and you said that he said that he would take the boats away. Now tell us as nearly as you can just the words that he used?

A. He said if I couldn't come down on the price and make it fifty dollars a month he would take the boats up to Palm Beach and work on them there, and not only that but would anchor them off the dock and that wouldn't cost him anything.

Q. You are telling it just the same way you did before. You are not saying his words; you are stating the substance. Can you tell us the words he used?

A. Those are the words he used.

Q. Whose boat was the fishing boat Clip?

A. I think that was Mr. Phipps'; John S. Phipps.

Q. Now was there ever any other occasion when the Seminole was stored in your yard, except this last time,

when she stayed there as long as two months, with her engineroom all locked up?

A. No, sir; not until the last time, the last time they went out and came in.

Q. Now you were saying this morning to Mr. Underwood about Mr. Riley that he said he would be down in a few days? When did he say that?

Mr. Underwood:

I object to that, if your Honor please. That has been covered both on direct and cross examination.

Mr. Matteson:

No. He mentioned that in his conversation with you this morning but he didn't say when he said it.

Mr. Underwood:

It is very clear when he said he said it.

Mr. Matteson:

I don't think so.

The Court:

I overrule the objection.

A. He said that the day when he phoned to know whether the boat had gone under the shed or not.

Q. Now you have just explained to us why you would rather have a full tank than an empty tank. Now I would like to ask you how about a tank that is partially filled?

A. Well, that is just as dangerous as an empty tank.

(By Mr. Matteson):

Q. Captain, I would like to have you tell us again just what happened to the Seminole when the explosion occurred?

A. It burned after the explosion.

Q. I don't mean after the explosion; I mean when the explosion happened. When the explosion happened what did it do?

A. What took place by the explosion?

Q. Yes.

A. Well, it blew the whole thing right out of the engineroom; blew part of it off the bow of the boat; to make it clear to you, the front part of the boat.

Q. Now I think you also said something about the Flamingo. Will you tell us what happened to her and what—

A. The Flamingo was laying—this is the bow of the boat here—and the Flamingo was laying up against her, I mean against the bow of the boat; the Flamingo was laying almost to the bow of the Seminole—

Q. You are indicating at right angles?

A. No, parallel; alongside the building.

Q. Which boat was in front?

A. The Seminole was in front of the building and the Flamingo was right to the right of the bow of the Seminole.

Q. Right ahead of the bow of the Seminole?

Mr. Underwood:

As he held his hand to indicate he didn't say "right ahead of the bow". Why not ask him to draw it on a piece of paper.

Q. Will you just draw a picture on this pad which will show how the boats were with respect to each other?

A. (Draws diagram.) This is the Seminole and this is the Flamingo.

Mr. Underwood:

Put "S" on the Seminole and "F" on the Flamingo.
The Witness:

These are the pilings right alongside the middle. This (indicating) is the Seminole and this is the Flamingo.

Q. All right, I will write "Seminole" in this one. Is that the right one?

A. Yes.

Q. And the other one I will mark "Flamingo".

A. That is right.

Mr. Jones:

Also indicate the piling.

Q. And these dots in here (pointing) represent the piling?

A. Yes, sir.

Q. I will just write under that line "piling".

A. That's right.

Mr. Matteson:

I offer this sketch in evidence.

Mr. Underwood:

No objection.

The Court:

Admitted.

(Sketch above referred to and made by the witness marked Libelants' Exhibit No. 63.).

Q. Now tell us what happened to the Flamingo?

A. It burned just the same as the rest of them.

Q. Was it affected by the explosion at all?

A. It blew off the deck and it was all on flame, and I couldn't see the entire cabin of it, but I did see the cabin down this way at the top, and nothing down here, and I think that the explosion affected the house but I don't know for certain or not or whether it burned.

Q. You said it blew off the deck, if I understood you right?

A. What?

Q. You said something about it blowing off the deck, what deck were you referring to?

A. For what?

Q. I thought you said in your last answer it blew off part of the deck. I don't know which boat you are talking about.

A. That was the upper deck where the house is. Below that is what we call the "below deck".

Q. Which boat are you talking about?

A. I am talking about the Flamingo. That is what you asked me about.

Q. That is right.

A. It was all in flame about the same time; and I don't know just exactly what was what.

Q. You were shown this letter this morning, Defendants' Exhibit I for Identification, which you wrote to Mr. Simmon and asked about the real owner of the boat—

A. That was after the fire.

Q. What happened that made you write that letter?

Mr. Underwood:

I object to that, if your Honor please. This is the letter that was brought up this morning (hands letter to Court).

The Court:

I think he is entitled to explain any writing over his signature, to give his explanation, which may be ac-

cepted and it may not, but as far as the competency of the evidence is concerned, I think it is competent.

A. Well, there was a rumor that I received that Mrs. Guest, Mr. Phipps' sister, was part owner of the boat and I wanted to be sure whether she was or not.

Q. And when did you hear that rumor?

A. I heard it around the place; different people asked me the question.

Q. Was that before or after the fire?

A. After the fire.

Mr. Matteson:

That is all, Captain.

Re-Cross Examination.

By Mr. Underwood:

Q. When you had this conversation with Mr. Riley and you say that he said he would be down in a few days; that was before the boat was put under the shed, was it not?

A. Yes, that was the day he phoned me about the keys and wanted to know whether the boat had been put under the shed and I told him—

Q. Your reply to him was that the boat had not been put under the shed?

A. I told him in that conversation that I had not received the keys.

Q. And that the boat had not been put under the shed?

A. Yes.

The Court:

You told him that you had not yet received the keys?

The Witness:

Yes, sir.

Mr. Underwood:

That is what he said.

Q. Now you said something about the danger of a gasoline tank empty, part full and wholly full. Do you mean that a tank full of gasoline is not to likely to explode as a tank only part full of gasoline?

A. That is right.

Q. Is it your point that gasoline will not explode but that gasoline vapor will?

A. That is right.

Q. Liquid gasoline will not explode, is that right?

A. I wouldn't say for certain; I wouldn't want to risk it.

Q. That is what you mean when you say a full tank is safer than a partly filled or empty tank; is that right?

A. That is right.

Mr. Underwood:

That is all.

Mr. Matteson:

That is all, Captain.

Mr. Botts:

I want to say to Mr. Underwood that I am not going to bring Captain Pilkington down to these proceedings regularly, but if anything transpires and you want him back here, give me a day's notice and I will bring him back.

Mr. Underwood:

Thank you very much.

(Witness excused.)

645 Thereupon J. F. RILEY, JR., was produced as a witness by the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Your full name is—

A. J. F. Riley, Junior.

Q. Where do you live?

A. In Palm Beach.

Q. Your street address?

A. 201 Plaza Circle.

Q. Are you here in response to a subpoena duces tecum addressed to you personally?

A. Yes, sir.

Q. Are you also attending here in response to a subpoena duces tecum addressed to officers of the Palm Beach Company?

A. I don't know that it was officers of the Palm Beach Company.

Q. Have you with you a copy of the subpoena addressed to you personally?

A. I have it there on the desk.

Q. Do you have a copy of your subpoena there?

A. Yes, sir.

Q. This subpoena issued out of this Court on March 7, 1939, and the paragraph addressed to you personally appears on the third page of it, is that right?

A. Yes, sir.

Q. Have you brought with you all the documents that are called for in that paragraph?

A. I brought all of them I have, yes.

Q. Will you produce them, please?

A. They are here on the—

Mr. Underwood:

If your Honor please, I have the documents and I am quite willing to produce them, of course, and redeliver them to the witness, if that is what the question means, but if the question means that Mr. Matteson wants the documents delivered out of the hand of the witness into his hands, I object to any such general question as that. I think he ought to be specific. I do not think that any situation here justifies a general fishing excursion through the books, papers and documents described in the subpoena.

The Court:

Let the witness take them and have them in his possession. His answer would be that he has produced them as nearly as possible. Suppose you get them and put them in the possession of the witness.

Mr. Underwood:

If your Honor please, I think the witness has now produced a substantial number of documents.

The Court:

Proceed.

(By Mr. Matteson):

Q. Do I understand that these documents also include those covered in the subpoena addressed to the officers of Palm Beach Company, or only those addressed to Mr. Riley?

Mr. Underwood:

I am not entirely clear as to what the subpoena means. It was drawn with a very heavy brush, and if what we have produced is not sufficient I would appreciate being advised just what more is required. I have some other

documents, but I have produced in response to the subpoena to the best of my knowledge and belief more than has been asked of this witness.

The Court:

Individually or as employee? It is your impression that what he has produced in response to the subpoena duces tecum served on him personally and as employee—

Mr. Underwood:

Yes. If there is anything missing and we have it, we will be glad to get it.

Mr. Matteson:

Now, if your Honor please, I would like to have these documents marked for identification. We can cover them under one number.

Mr. Underwood:

At the outset the question arises as to time limit fixed in this subpoena. The first file produced has on it at the top "1937-1938".

The Court:

Is this file a collection of papers and documents made in connection with answering the subpoena, or is it a file in its original state at the time of the service of the subpoena?

Mr. Underwood:

I am advised that it is in its original state, and as kept in the ordinary course of business, but subsequent to the fire.

Mr. Matteson:

I am not interested in anything subsequent to the fire.

Mr. Underwood:

Here is one entitled Seminole Boat Company, January 1, 1934, to July 30, 1935".

(Above filed marked Libelants' Exhibit No. 64 for Identification.)

Mr. Underwood:

The next one says, "Seminole Boat" at the top, 1930-1933.

(Above file marked Libelants' Exhibit 65 for Identification.)

Mr. Underwood:

The next one says, "Seminole Boat" at the top, 1928-29.

(Above file marked Libelants' Exhibit 66 for identification.)

Mr. Underwood:

The next one says "Seminole" with some words crossed out—1923-1927.

(Above file marked Libelants' Exhibit 67 for identification.)

Mr. Underwood:

Then follows a group of payrolls. The first one being payroll for week ending August 30, 1934.

(Above group of payrolls marked Libelants' Exhibit 68 for identification.)

Mr. Underwood:

The next one is for the week ending June 28, 1934.

(Above documents marked Libelants' Exhibit 69 for identification.)

Mr. Underwood:

The next one for the week ending June 27, 1935.

(Above documents marked Libelants' Exhibit 70 for identification.)

Mr. Underwood:

The next one for the week ending April 26, 1934.

(Above documents marked Libelants' Exhibit 71 for identification.)

Mr. Underwood:

The next one for the week ending December 27, 1934.

(Above documents marked Libelants' Exhibit 72 for identification.)

Mr. Underwood:

The next one for the week ending October 25, 1934.

(Above documents marked Libelants' Exhibit 73 for identification.)

Mr. Underwood:

The next one for the week ending February 22, 1934.

(Above documents marked Libelants' Exhibit 74 for identification.)

Mr. Underwood:

Now, I have a file of Palm Beach Company vouchers that is very numerous.

Mr. Botts:

Can't we put them in one envelope and give them one number?

Mr. Underwood:

I think that is a satisfactory way to do it.

(Vouchers of Palm Beach Company referred to above were marked Libelants' Exhibit No. 75 for identification.)

Mr. Underwood:

I might state that these in part cover checks and bills which I have agreed to give to Mr. Botts.

Mr. Botts:

That will be all right; that will be quite satisfactory, if they are included. We can mark them as exhibits and then we can examine them later.

Mr. Underwood:

Of course merely marking them for identification doesn't mean that you can examine them.

Mr. Botts:

That will be a matter for the Court to determine.

Mr. Underwood:

Quite true.

The Court:

Proceed, gentlemen.

Mr. Underwood:

Now, does your subpoena, as you interpret it, include the books of the Seminole Boat Company?

Mr. Matteson:

Yes.

Mr. Underwood:

Mr. Riley, did these books of the Seminole Boat Company come from your custody?

The Witness:

Yes, sir.

Mr. Underwood:

The first is the account book of the Seminole Boat Company.

Mr. Matteson:

Mark that.

(Account book of Seminole Boat Company marked Libelants' Exhibit 76 for identification.)

Mr. Underwood:

The next is a file of Journal vouchers of the Seminole Boat Company, with supports, beginning with voucher No. 1 and down to and including voucher No. 22.

(Above Journal vouchers of Seminole Boat Company marked Libelants' Exhibit 77 for identification.)

Mr. Underwood:

Next is another file of Journal vouchers beginning with voucher No. 23 to and including voucher No. 103, with supports.

(Above Journal vouchers numbered 23 to 103, together with supports, marked Libelants' Exhibit 78 for identification.)

Mr. Underwood:

Next is the Stock Certificate book of the Seminole Boat Company.

(Stock Certificate book of the Seminole Boat Company marked Libelants' Exhibit 79 for identification.)

Mr. Underwood:

Next is the Minute book of the Seminole Boat Company, including the by-laws.

(Minute book of Seminole Boat Company marked Libelants' Exhibit 80 for identification.)

Mr. Underwood:

Next is certified copy of certificate of incorporation.

(Certificate of Incorporation of Seminole Boat Company marked Libelants' Exhibit 81 for identification.)

Mr. Underwood:

Now, if your Honor please, I do not think of anything else that we could have produced in response to this subpoena.

Mr. Matteson:

How about the records of the Palm Beach Company. I understand that this witness appears as an employee of the Palm Beach Company.

Mr. Underwood:

We have produced the files which came from the office of the Palm Beach Company that are kept there for the Seminole, and I am advised that they are the only files that are maintained in that office in regard to the Seminole. Mr. Matteson and I may have a dispute

as to whether they are files of the Seminole Boat Company or the Palm Beach Company, but they are, as I am advised, all of the files in that office in regard to the Seminole.

The Court:

We will recess until Monday morning at 9:30.

Hearing recessed until 9:30 a. m. Monday, March 20, 1939.

March 20th, 1939, 9:42 o'clock a. m.

Hearing resumed pursuant to adjournment of previous day. Appearances same as heretofore noted.

656 LESLIE TYLER BROWN was produced as a witness by the libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. What is your full name, Mr. Brown?

A. Leslie Tyler Brown.

Q. What is your residence?

A. 705 Miller Road.

Q. South Miami?

A. South Miami.

Q. What is your occupation?

A. At present I am engineer at the Southern Laundry on Southwest 8th Street.

Q. And have you ever been a marine engineer?

A. Yes, sir.

Q. Were you at one time engineer of the Yacht Seminole?

A. Yes, sir.

Q. How much experience have you had as a marine engineer?

A. Well, I would hate to say, all my life, but I have been interested in them ever since my first experience, was in 1900; I have been following the water off and on since then; not continuously.

Q. How long since you have been working in the laundry?

A. I have been in the laundry business—that is, working there, for five years.

Q. And prior to that time was your experience marine?

A. Well, I would say about 50% of it; ashore if I couldn't get a marine job.

Q. Do you hold a marine engineer's license?

A. Yes, sir; internal combustion.

Q. Have you been employed as engineer of other gasoline yachts besides the Seminole?

A. Yes, sir.

Q. Roughly, how many?

A. Oh, I suppose half a dozen.

Q. Will you tell us what your period of service as the engineer of the Yacht Seminole, was?

A. The length of time, about?

Q. Well, when it began and when it stopped.

A. In '22, about April, during the month of April, some time in '22; until I suppose the latter part of the winter or the first of the summer season of '27.

Q. When you began your employment, was she a gasoline yacht or a steam yacht?

A. Gasoline.

Q. Do you know whether she had previously been a steam yacht?

A. Yes, I know that she had.

Q. What do you know about the ownership of the Yacht Seminole at the time you were engineer?

A. You mean in what way, sir?

Q. Do you know who was the owner?

A. Well I always understood that she was owned—

Mr. Underwood:

I object to what he understood.

A. —by the Phipps.—Sir?

The Court:

He is addressing the Court.

A. —Pardon me.

Mr. Underwood:

I object to what he understood.

Mr. Matteson:

If your Honor please, I think that the general reputation and understanding as to the yacht at that time is material to the case; but I don't insist on that point.

The Court:

I think the objection is well taken.

Q. Put it this way: Do you know whether Mr. John S. Phipps had any connection with the yacht at that time?

A. Yes, sir.

Q. What connection did he have, according to your observation?

Mr. Underwood:

If your Honor please, I don't like to make myself objectionable, but this is an important aspect of the case; it seems to me that a better foundation than that ought to be laid before this witness is asked that question. It seems to me the source of his knowledge—he says he

knows—ought to be inquired into before he is allowed to state conclusions.

The Court:

I think the question is proper; if the answer brings forth any objection, you may move against it.

Q. Just tell us what you actually observed:

A. Well when I was hired, I was hired by the captain, who told me the yacht was owned by Mr. Phipps.

Mr. Underwood:

If your Honor please, I move to strike out what the captain told him.

The Court:

The motion is granted.

Q. Don't tell us what anybody told you; just tell us what you observed.

A. I would like to answer that to the best of my ability. We would get orders to move, directly from Mr. Phipps. Mr. Phipps would come aboard and give orders.

Q. What kind of orders?

A. In regard to repair work, or in regard to movement of the ship; or—in fact the general run of orders that would be issued to the captain or myself.

Q. Was there any one else who gave orders during that period?

A. Yes, representative from the Palm Beach office, and later from the Biscayne Boulevard office.

Q. Yes. Was there any other member of the Phipps family that gave the kind of orders you are speaking of?

A. Mr. H. C. would use the boat once in a while; when he was aboard he would—we would do as he suggested, of course. But we never—I think we ever re-

ceived an order from him in regard to anything except movement of the ship while he was aboard of her.

Q. Now Mr. Brown, during the period that you were in service as engineer of the Seminole, will you tell us whether there were any facilities in the engine room for drawing off gasoline?

A. Oh yes.

Q. What did that consist of?

A. Well, there were—when I went aboard there, there was one pipe or more, I don't remember exactly—one or more pipes leading from the manifold, as an offset you might say, just rigged up as a pipe line with a Globe valve and a nipple, L possibly, so we could put gas into a can from these drain pipes.

Q. And what use was made of this offset?

A. Well the launches, fish boats, would come up alongside of the engine room, where we had a square window over the work bench, and we would can it from there into the fish boat through this window.

Q. Just tell us what you mean by canning it.

A. Well you put a can of some kind under there, whatever was convenient; we generally have had spout cans—flexible spouts; pour it in there, drain gas into the can, pass it out the window to a man aboard the boat, and he would pour it in the gas tank.

Q. Now will you explain to us so we will have it clearly in mind, just what you mean by an offset. Do you mean such as we—

A. I sort of compare it to a water faucet; however, it was just piped up with, as I remember, half inch pipe, with a half-inch Globe valve, and then an L and a nipple turned down so that the gas coming out of this valve would go into a vertical stream—into the can.

Q. Now to what extent was this practice followed during the period that you were on the yacht as engineer?

A. For the first several years it was the only way we had to put gas into the fish boats.

Q. Was the gasoline ever used on board the yacht itself, that you recall?

A. This that we drew out of this tank?

Q. Yes.

A. Only for the capstan engine.

Q. How were the launches on deck taken care of?

A. Generally tanded after they were put overboard.

Q. How you spoke of fish boats. Will you tell us what fish boats you have in mind?

A. We carried two clinker built dories, about nineteen feet long, equipped with Kermath engines; we had I suppose as many as one to four or five outboards at different times—outboard engines with three—average of about three boats that they would fit; and generally what we consider a guide boat.

Q. These boats that you mentioned, before you mentioned the guide boat, were they boats that we carried on the Seminole, or not?

A. Yes, sir; carried on the boat deck.

Q. This guide boat that you spoke of, what was that?

A. Depending on who used the Seminole, as to what guide boat we would use; but we always had a fish guide with us, sometimes one of the owner's boats, sometimes a hired guide.

Q. Do you know a boat by the name of the Clip,—known as the Clip?

A. I don't think I recall the name, sir.

Q. Do you know who owned these guide boats that you speak of?

A. In the course of the years that I was on, I suppose we had a dozen or more fish guides with us, at different times; they would furnish their own boats.

Q. I want to ask you about the gasoline tanks on the Seminole. Will you describe them to us and tell us where they were located?

A. These tanks were in the old coal bunker, which was just forward of the engine room; four tanks; they

held about two thousand and just a few gallons over, of gasoline, filled.

Q. You mean the four tanks?

A. The four tanks combined. They were steel constructed, riveted tanks; and they were—I don't know how they got them in there; they were set in there, anyway; they were set in there just as close as you could get tanks in the old coal bunker.

Q. Was it possible to go into that space to inspect these tanks?

A. You could get under the tanks and look up; you couldn't get around them anywhere.

Q. How would you get under the tanks?

A. In the forward bulkhead of the engine room, under the log desk, there was a hole I should say maybe twenty inches square, just a rough estimate; you would crawl through this hole, under the log desk, into the compartment under the gas tanks, which was right on the skin of the vessel probably, at first, or on the frames. The gas tanks were about—possibly thirty inches or three feet above the frames.

Q. Was there anything under the bottoms of the tanks, that you know?

A. There was something, a pan of some kind; to my knowledge, it was a lead pan, seemed to be sheet lead or something of the sort; wasn't riveted; but there was a pan of some kind under those tanks, as I remember it.

Q. Did the tanks set in the pans?

A. Yes.

Q. Then as you looked up from underneath, what would you be able to see? Would you be able to see the bottoms of the tanks?

A. Oh no, no; the bottoms of the tanks were setting in this pan; you could see the side of the tanks, if the flashlight was good enough. You couldn't reach them.

Q. You say these tanks completely filled this compartment?

A. Not completely; they were round tanks in a rectangular compartment.

Q. How much space was there around the tanks? That is what I am getting at.

A. I don't judge it was over two inches at the most, on either the forward or after side of the tank.

Q. Do you know how much between the tanks there was?

A. I would be afraid to answer that definitely; it wasn't but very little room; you couldn't get in there; you couldn't get between them.

Q. A man could not get in there?

A. No, sir; he absolutely could not. I have tried it.

Q. Was there any means of ventilating this tank compartment?

A. That is rather a broad question, sir. Ventilation is something that is—

Q. Were there any ventilators in there?

A. No, there was no permanent ventilators; no, sir. There was a side door, that is a wooden door in the wooden side of the ship above the top rub-mold, which was the top of the steel sides.

Q. On which side?

A. On the port side; and above the top rub mold there was a small wooden door which I finally prized open; it had been painted and white-leaded shut to such an extent that I had to drive a wedge in to open it; and I opened it to ventilate the tank one time, for my own sake; I had to sleep there.

Q. Those are the only openings into this tank compartment that you know of?

A. Outside of a few holes in the forward bulkhead that connected with the forward bilges and the cabins.

Q. How were these tanks connected up with the engine room?

A. Iron pipe, through holes in the bulkhead. The holes in the bulkhead were possibly—well they were

roughly cut, 2-1/2, two or three inches in diameter; and a quarter—I think it was a quarter or three eighths iron pipe came through there into a made-up manifold of iron pipe, that extended along the forward bulkhead of the engine room, that went from one tank to the other, and dodged around the timber, or whatever it had to get around about, screwed pipe connections, which was just fitted around the forward bulkhead—the frames.

Q. What do you mean, screwed pipe connections?

A. Ordinary iron pipe threads; standard fittings.

Q. And how were the lines run from this manifold to the engines?

A. About the same manner. Out of the manifold there was a shut-off valve from a T, and then a strainer; and from the strainer a line of pipe went—that is from each strainer; there was a strainer for each main engine, and the line of pipe went to each carburetor.

Q. How was this line of pipe made up? What was it made up of?

A. Iron pipe.

Q. And how were the connections made?

A. All that I replaced were made with litharge and glycerin; I don't know what the originals were; they were just screwed pipe connections; what dope they used on them I don't know.

Q. That was the point I meant to ask about. They were screwed pipe connections?

A. Yes, sir.

Q. Can you give us any idea of the number of screwed pipe connections in these feed lines?

A. No.

Q. Well, were there many or few?

A. Well, there were plenty; I would say, many.

Q. And how about the manifold line?

A. It was built up the same way; screwed pipe, and there they wanted to make a bend, they would screw

another L and a nipple in, instead of bending the pipe; not to criticize them, but that's the way it was built up.

Q. Now tell me, during your experience of five years on this boat, was there any difficulty experienced with these screw connections—screwed pipe connections—threaded pipe connections?

A. Well I had—on numerous occasions I would find a leak or a drip or a vapor leak or something of that sort, where you could feel the moisture; and I tried, honestly tried, to re-pipe it, with copper tubes; and not getting that, I repaired the pipe lines the best of my ability. I would find one leaking, I would tear it down, and as I say, put litharge and glycerin on, which was what we knew at that time for a gasoline joint.

Q. You spoke of trying to re-pipe with copper tubing; will you tell us what you meant by that?

A. I mean that the captain put that job in himself, and he wouldn't give me the authority to do it; I couldn't do anything without his authority.

Q. And who was the captain at that time?

A. Nelson.

Q. Now will you tell me, Mr. Brown, whether to your knowledge any of these conditions were brought to the attention of Mr. John S. Phipps?

A. I remember on numerous occasions I have asked Mr. Phipps for permission to do different things, along in that line, possibly the gasoline line was one of them at times; and he would always refer to the captain, as the "king of the vessel"; and I couldn't go any farther.

Q. How about this practice of taking gasoline from the engine to fuel up the boats alongside; can you tell us whether to your knowledge that practice was brought to the attention of Mr. Phipps?

A. No; I know he has stood on the rail, or at the rail, plenty of times, and told us to hurry, to get ready to go fishing; something of that sort. He knew that was

being done, but I don't know as it was called to his attention.

Mr. Underwood:

If your Honor please, we move to strike out, "he knew it was being done".

Mr. Matteson:

If your Honor please, I think that is part of the statement.

Mr. Underwood:

Well, as I understand the rules of evidence, your Honor, he can state what he observed; he can't state that another man knew; it calls for this man to know what went on in somebody else's mind.

The Court:

I think technically the objection is well taken.

Mr. Botts:

You are referring now to that part of the statement, he knew it was being done?

Mr. Underwood:

That is right.

Mr. Botts:

I think that should go out, myself.

Q. Was there any other means used of transferring gasoline from the engines to the boats alongside, besides cans, during the period you were on board, that you recall?

A. Yes, sir; yes, sir.

Q. What was that?

A. I don't recall the date, but some time during the last year or two that I was on there, the captain had a bright idea one day, and came down in the engine room and explained to me how he wanted a suction line run from the manifold to the bilge pump that we were using at the time; run a discharge pipe from that bilge pump over the side through this,—through a hose, rather; so that we could start up the bilge pump, pump gas out of the manifold into the boats, they taking it out in tin cans—or five gallon cans.

Q. Was that done?

A. It was done. I objected to it strenuously, but he insisted I do it, and I did it.

Q. In your experience as a marine engineer, can you tell us about the propriety of drawing of gasoline in the engine room for the purposes you have described?

Mr. Underwood:

If your Honor please, I object to that on two grounds; (1) I don't think the proper foundation has been laid for asking that question of this witness. (2) There is no contention that this accident resulted from anybody's drawing off gasoline; there wasn't anybody anywhere near the draw-off valves at the time this explosion and fire are said to have occurred. (3) It is immaterial.

Mr. Matteson:

As far as the materiality is concerned, it is quite clear that no one will ever know exactly what the source of the gasoline fumes in the Seminole was, that exploded. But we have here a provision for drawing gasoline in the engine room, which I believe the evidence will show is entirely improper, and is prohibited by all known rules governing such situations, as a dangerous appliance. And the very fact that it was there, shows negligence on the part of the owner; and the established custom

of using it for a long period of time shows the owner's knowledge. Now with the existence of this highly improper situation in the engine room, and the impossibility of knowing exactly where the gasoline came from, plus the evidence—and there is some—that the valve on this line was actually left open, and may have been a source of gasoline fumes, I think it certainly does not lie in the mouth of the respondent John S. Phipps to object to evidence along this line, and I don't think he will be in a position to show that this highly improper situation could not have been a contributing cause of this accident; and I think that burden would lie on him, as the authorities will show.

The Court:

Mr. Brown, did that remain as a part of the equipment for drawing off gasoline and putting it into these other boats, all the time that you remained as engineer?

A. Yes, sir.

The Court:

Was that condition existing when your services were—

A. When I left the ship.

The Court:

When you left the ship?

A. Yes, sir.

The Court:

I think on the second ground that it is competent; and on the first ground it goes to qualify of his testimony rather than to the competency of it. Certainly an engineer—he may not have been qualified as an expert from a technical standpoint—schooling, and so forth; but I think it is competent; so I overrule the objection.

Mr. Underwood:

I don't quite understand the purport of your Honor's last two questions to the witness. You asked him if they had remained?

The Court:

I had gotten the idea from what he first stated that it was installed and then withdrawn; not continued in use.

Mr. Underwood:

Well, he has spoken of two methods of getting gasoline out; one, the draw-off valves, and the other some method of pumping.

The Court:

Well my questions were with reference to the pumping: did you so understand?

A. Yes, sir; that is the way I understood it.

Mr. Matteson:

I would like to be sure we are clear about that.

Q. Mr. Brown, at the time that you left the boat, at the end of your period of service there, what method was in use at that time? What method or methods were in use at that time, for taking gasoline from the engine room for use in the boats alongside?

A. Used both methods, depending on the size of the boat.

Mr. Matteson:

I think a question was objected to and not answered. (Question beginning at bottom of page 17b20 was read.)

Q. Will you tell us about that? Do you understand the question?

A. Let's get it straight.

(Question was re-read: "In your experience as a marine engineer, can you tell us about the propriety of drawing off gasoline in the engine room for the purposes you have described?")

A. It is a practice that is possibly used on very, very few ships. I had never seen it before, and I didn't like it. I wouldn't do it myself if it were left up to me entirely.

Q. Now when you say that, why? Tell us why.

A. It seems that from just the point of view that I would take, that gasoline vapor is very dangerous; and you are bound to get some vapor; and if you are drawing off gasoline in an engine room, with or without machinery running, it seems foolish to do it.

Q. Mr. Brown, I wanted to ask you another thing, about the provision for lighting on the Seminole. Can you tell us about how her lighting lines were run? That is, what sort of wires were used, and whether conduits were used, and that sort of thing?

A. Well sir, I hunted five years for them to try to answer that question myself. What I found was that the older part of the vessel, up in the cabins where it hadn't really been changed during the conversion, the wires were run under wood molding, with no protection other than the insulation in the wire; they were pulled through; anywhere they wanted to go with a wire they just simply went with it and they made a connection; and the source of that current for the cabins came from a line of conduit, or several lines of conduit that ran from the port forward, two of them carried along the starboard side, and I think there was two of them or more passed under the gas tanks, through the bulkhead, and to take in the port side of the vessel; the starboard side one continued right up the starboard side.

Q. Now this conduit pipe that was used, will you describe that to us?

A. That is another thing I have often wondered what it was; it was a sort of a black iron pipe; it wasn't galvanized; there was nothing to it except black iron pipe, which was thoroughly rusted; the conduit was rusted in places where the wires were exposed.

Q. Now what was the condition of this conduit pipe that ran under the tanks, at the end of your term of service?

A. That was about the worst part of it; it was exposed; the wires were exposed there where the conduit was absolutely rusted—or had been just previous to the time I left it; it wasn't exposed at the time

Q. I don't quite understand what you are telling us.

A. Well I don't know how I can explain that exactly; but I requested that we re-wire the ship, on several occasions, and was turned down.

Q. Now, to whom did you make that request?

A. To the captain; as "king of the vessel".

Q. And can you tell us whether that was discussed by you with Mr. Phipps at any time?

A. At Palm Beach I mentioned it to him one day at the dock, that the vessel needed re-wiring; and he referred me to the captain; and the captain turned me down, said he couldn't afford it,—couldn't do it.

Q. Did you tell Mr. Phipps why this was necessary or important?

A. Well I suppose I told him I had been having so much trouble with the wiring,—something of that sort.

Mr. Underwood:

If your Honor please, I move to strike out what he supposed; I ask also that the time of this conversation be fixed.

Mr. Matteson:

I consent to that, if your Honor please; I will ask:

The Court:

What about striking what he supposed? I think the motion to strike that which he supposed, is well taken.

Q. Mr. Brown, I don't want you to suppose; I want you to give us your best recollection of any conversation that you had with Mr. Phipps, and as has been requested, please specify the time as nearly as you can.

A. I don't think it would be possible for me to specify the time of that conversation; because there was—it was just a continual request for this, that and the other, and a continual turn-down of the requests, and referred to the captain as to what I am going to do; and he seemed to take, or have, full authority; and when I requested the ship be re-wired I was referred to the captain, and he just simply said it couldn't be done; and I proceeded to knock the rust off of the conduits, and lay a splint alongside of them and take them up, give them a coat of shellac and let it go at that. There is such a thing as the end of human endurance on a boat like that; that's the way I figured it.

Q. You spoke of continual requests as being referred to Captain Nelson. These continual requests that you refer to, were made to whom?

A. J. S. Phipps.

Q. Now see if I get this clear. Which one of these two did you first consult, and then be referred to the other: did you talk with the captain first, and be referred to Mr. Phipps,—or Mr. Phipps and be referred to the captain? Or both? What was it?

Mr. Underwood:

If your Honor please, I object to that on the ground it is all very clear on the record what he did; and I

suggest that this is an attempt on the part of Mr. Matteson to get his own witness to change his testimony.

Mr. Matteson:

I want it perfectly clear; that is all.

The Court:

Read the question. (Question was read.)

The Court:

Well it is clear to me, but I don't see any objection to the question being asked; I will overrule the objection.

Q. Go ahead and answer, Mr. Brown.

A. It will have to be answered in more or less a round-about way, because on numerous occasions, the three of us were together, and some occasions it was Mr. Phipps and myself only, and other occasions it was the captain and myself only. I can't recall any particular conversation where you might say I had gone to Mr. Phipps first, or gone to the captain first; but I did on numerous occasions go to one, and go to the other, trying to get a point over on something I thought was necessary.

Q. Now in these conversations that you speak of, at which Mr. Phipps was present, or in which you went to Mr. Phipps asking for these things, did you give your reasons?

Mr. Underwood:

If your Honor please, I object to this; I think the witness ought to be asked as to what the conversation was. I would like to have the time and place fixed, and the subject of the conversation.

Mr. Matteson:

I will withdraw the question.

Q. Just tell us as fully as you can of the conversation that you actually had with Mr. Phipps.

Mr. Underwood:

May the witness be instructed, your Honor, to do these conversations one by one, and fix the time and the place and the subject?

The Court:

He says he can't do that; according to his former answers, it has to be general.

Mr. Underwood:

Can he do it as well as he can?

Q. I think that is understood—as well as you can.

The Court:

Any time you can be specific, please do so.

A. I appreciate that, sir, but it is five years of service; it is back twelve years ago; I wouldn't swear to a date on any of those conversations; I couldn't.

Q. Well getting back to the original question, I was asking you to tell us as fully as you could of any conversations that you had with Mr. Phipps; what was said about those conditions that you have described?

A. Well as I said before, it is just a case of some little thing coming up, I would be worried about,—the gasoline or the electric wiring, or something of that sort; taking it up with Mr. Phipps, we would be up there together, one summer particularly I could look on the records possibly and find that, but I doubt it, what summer it was; I spent the entire summer up there; he was there late in the summer and early in the fall while we were laying at the dock; that period of time I had

a number of conversations in regard to the boat in general; and anything that I would suggest for the good of her engine room or the good of the craft, I was referred to the captain.

Q. Did I understand you to say this was in Palm Beach?

A. Yes, I have spent one summer in Palm Beach, at the Phipps Dock.

Q. Do you remember which summer that was?

A. I wouldn't be certain. I went on her in '22 and left her in '27; it was some summer between those dates.

Q. Could the gasoline tanks as they were installed, be completely drained of gasoline?

A. No, sir.

Q. Why not?

A. The draw-pipe or the connection to the manifold, was quite a distance, a matter of inches, above the bottom of the tank; and the tanks had a concave bottom, because they were setting on a pan and the rivet joints showed; by feeling around the pan you could feel the rivets. It was a concave bottom tank, and the connection was several inches above the bottom rivet seam.

Q. These pans that were under the tanks, can you tell us whether there was one, or one big one—one for each tank and one big one? Can you tell us that?

A. There was one tank, if my memory serves me right—

Q. One tray?

A. Yes, sir; one tray, and the four tanks set in the one tray.

Q. Was there any drain for the pan?

A. Drain?

Q. Yes, for draining out the pan?

A. No; no, sir.

Q. How was the pan cleaned?—or was it?

A. No provisions made for cleaning; there was no way you could get to it, any more than reach over

the edge from below it; there was no room to get up between the tank—or the pan, and the bulkhead.

Q. Was there any provision for lighting the space under the tanks?

A. There was one light forward of this hole that you crawled through to get into—there was one light on a kep socket, as I remember; some sort of a switch socket, key-chain pull or something of that sort; to my knowledge, or to my best remembrance it was a key socket. It was just simply a light on a socket.

Q. And to what sort of a line, or how was that connected to the electric source?

A. I believe—now excuse me, but I would be afraid to say.

Q. Were the tanks ever tested during your period of service on the Seminole?—the gasoline tanks, in any way?

A. No, sir.

Q. No test of any kind?

A. No, sir.

Q. Were they ever taken out?

A. No, sir.

Q. Do you know how the tanks were secured in place, if they were?

A. By opening that door I could see wedges, wooden wedges of different shapes, between the bulkheads and the tanks,—is the only fastening I ever saw.

Q. What provision was there for ventilating the engine room of the Seminole?

A. There was one square window over the work bench; there was one small square window in my room, or the engineer's room, rather, which was originally part of the engine room; and there were two ventilators on the boat deck, which connected with the vertical pipe to the engine room. There was a hatch opening in the after part of the engine room, with a vertical ladder to go on deck.

Q. These ventilators that were connected with the boat deck, will you describe those?

A. Well they were just ordinary ship ventilators, about fifteen inch vertical pipe, turned from the top manually; there was no control from the engine room. I remember we used to call to the bridge to turn them out of the weather, in case of rain or something of that sort.

Q. That is, cowl ventilators?

A. Yes.

Q. And did the ventilators extend—these cowl ventilators, did they extend below the deck which constituted the ceiling of the engine room—ceiling or upper part of the engine room?

A. Possibly a matter of inches; not very far.

Q. You spoke of this engineer's room, that was originally part of the engine room. Will you describe that to us?

A. That was on the port side of the engine room, inside of the engine room, against the after bulkhead; floor space was possibly eight feet long, more or less, by four or five feet wide at the bottom, including your lower bunk; and it was built on an angle side wall; inboard side-wall was built on an angle and was supported to the deck overhead, framed up with sort of an angle iron construction, and framed up with boards and matched lumber.

Q. And what use was made of that room while you were on board the Seminole?

A. That was the chief engineer's room.

Q. And what means of exit to the deck did you have from there?

A. To the deck? Through the engine room.

Q. Through the hatch?

A. Through the engine room, and the engine room hatch.

Q. Did you describe the skylight for us?

A. There was a skylight just forward of the hatch, which could be hinged open; it was screened and then double hinged skylight lids on it, frosted glass.

Q. Were there any braced or soldered connections in the gas lines in the engine room—that is the manifold and feed lines that you have described?

A. I can't recall any, sir.

Q. You cannot recall any?

A. No.

Q. Was that the answer, "I can't recall any"?

The Reporter:

Yes, sir.

Q. Was Mr. Phipps, Mr. J. S. Phipps, in the engine room at any time during your period of service, that you recall?

A. Yes, sir.

Q. Well; will you tell us how often he was there?

A. He didn't come into the engine room very often, but he has been in there, he has come down and talked. I would say on several occasions, while we were under way.

Q. And talked with you, you mean?

A. Yes.

Q. In connection with those conversations, did you or did you not point out to him any of these things that you have told us about?

A. I don't recall that I did at the time of his visit to the engine room.

Q. There is one thing that you spoke of, that I would like to have cleared up. You spoke of, I think the word you used was, a gas leak, or a weeping leak in the gasoline line. Will you describe what you meant by those terms?

The Court:

Read the question again. (Question read.)

A. Well a weep, a seeping leak, or a gas leak, in a gasoline line, I consider a very, very small leak, something that doesn't actually drip and show a stream of gasoline running from the pipe, but by running your hand along the pipe and smelling your hand you can smell gasoline, or you can smell the gasoline vapor if you are observant enough; and those are leaks that I consider an engineer should look out for.

Q. If an engine room such as the engine room of the Seminole were closed up for a period of time, in your opinion could such leaks account for an accumulation of gasoline vapor there?

Mr. Underwood:

I object to that on the ground that it is a hypothetical question without the facts given, your Honor; and wholly speculative besides.

Mr. Matteson:

This witness knows the engine room of the Seminole, the conditions there. It seems to me under the circumstances he can answer the question all right. * * *

The Court:

Capt. Brown, did you repair any of those conditions?

A. Yes, sir; on a number of occasions I have repaired those leaks.

The Court:

How frequently would you have occasion to make such repairs?

A. Well I would say—I would go over them to the best of my ability when we were laying idle and try to

get them ready for the next trip. It may be months apart.

The Court:

I am going to let the witness answer, but I am going to reserve my ruling on that.

Mr. Matteson:

What was the question, again?

Q. (Question read.) ("If an engine room such as the engine room of the Seminole were closed up for a period of time, in your opinion could such leaks account for an accumulation of gasoline vapor there?")

A. Absolutely, if you had those leaks at the time the engine room was closed up, it could cause a very explosive vapor.

Q. Well perhaps I can develop it better in this way. I think it is perfectly clear, but the further thought I want to develop: what is the difference between a leak that drops gasoline, and a leak that weeps gasoline, or seeps gasoline?

Mr. Underwood:

If your Honor please—

Q. —and as to its effect?

Mr. Underwood:

May I ask for my own enlightenment, whether this question is directed to any such leak anywhere, or some particular leak on some particular boat?

Mr. Matteson:

If your Honor please, I am satisfied with the answer; I will let that question go.

Q. What means was there on the Seminole at the time you were there, for determining the amount of gasoline in the tanks?

A. Well just to the starboard side of the log desk, or between the log desk and the batteries, there was a verticle line of pipe, or riser, built up of quarter-inch iron pipe, with a T every 12 inches; and in each one of these T's there was a petcock; and you were supposed to guess at about how much gas you had, and start at the top and come down and open petcocks until you got gasoline pouring out of one of them, and then you decided it was somewhere between that one and the next one.

Q. There was no gasoline—I mean no glass gauge at that time?

A. No glass gauge; no, sir.

Q. Were there any sounding pipes?

A. No sounding pipe.

Q. Mr. Brown, you as I understood it slept in this engineer's room in the engine room of the Seminole, during your period of service there. Did these conditions that you have described cause you any uneasiness?

A. I thought about home many a night. I kept plenty of Pyrene in cans; I would carry five gallons of Pyrene in quart cans and scatter them all over the engine room; I had three or four on each manifold, and figured that if a fire started it would explode the can and possibly put it out.

Q. Well the question I asked you was, did these conditions cause you uneasiness? In answering Yes or No, what is the answer?

A. Well, yes, if you ask it that way.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Are you married, Mr. Brown?

A. Yes, sir.

Q. How long have you been married?

A. Thirty five years.

Q. How many children have you?

A. Three.

Q. How old are they now?

A. In sort of—23 or '4; 28 or '9; and about 34—close to 35. I was married in 1903.

Q. You have a healthy regard for your own safety, I suppose?

A. I also—yes.

Q. You slept in this engine room off and on for four years?

A. Five years.

Q. Five years. And you were uneasy all this time, but you continued to sleep there night after night, is that right?

A. Yes, sir.

Q. Of course you were right in the engine room when you were sleeping there, weren't you?

A. Practically so.

Q. Well the engine room is a rectangular space, is it not?

A. Roughly speaking, yes.

Q. And the engineer's quarters were set into that engine room?

A. Yes, sir.

Q. I show you respondents' Exhibit A for identification; ask you if that fairly represents the situation of the chief engineer's stateroom as it is marked there?

A. Very good, sir.

Q. Your entrance into that little room was on the forward bulkhead of that little room?

A. Yes.

Q. And your berth is just a foot or two from the port motor?

A. That is right.

Q. And the switchboard was located on the after bulkhead about midway between the two motors, wasn't it?

A. Yes, sir.

Q. Your berth is only three or four feet from there?

A. From the edge of it; yes.

Q. And from the gasoline tanks, which were seven or eight feet? Would that be approximately right?

A. Not quite enough; I would say ten feet possibly.

Q. The gasoline lines that you speak of, the manifold, led across the forward bulkhead of the engine room?

A. That's it.

Q. And the gasoline lines that you speak of from the manifold led down to the port motor?

A. Yes.

Q. Between the port motor?

A. Almost amidship; right to the port side of the log desk.

Q. And they came up on the port side of the port motor?

A. Yes, to the carburetor.

Q. Almost under your bunk?

A. Almost.

Q. The carburetor was approximately under your bunk, wasn't it?

A. Yes, sir.

Q. And the other side, the gasoline line led back to the starboard side of the starboard motor?

A. That's it.

Q. Was there a generator in there at that time?

A. At the time I took it, the generator was under my room.

Q. When you left her, was it still under your room?

A. No, I moved it out here in the open.

Q. Notwithstanding your uneasiness, you slept in that room over one carburetor and within ten feet of these gasoline tanks for five years; is that right?

A. Now—

Q. Is that right?

A. Yes.

(At 10:55 a. m., informal recess was had.)

Q. I didn't understand, Mr. Brown, whether you have a license from the steamboat inspection service or not?

A. Yes, sir.

Q. What license do you hold?

A. Internal combustion.

Q. From the steamboat inspection service?

A. Yes, sir.

Q. For steam engines?

A. Internal combustion.

Q. Not steam engines?

A. Not steam.

Q. And what other vessels have you served on as an engineer? Perhaps I can shorten it; whether you have ever served on another houseboat?

A. Yes.

Q. What other houseboat?

A. The old Boomerang.

Q. And how long ago was that?

A. About 'twenty-one.

Q. 1921?

A. About 1921.

Q. Before you went on the Seminole?

A. Yes, sir.

Q. How big a vessel was she?

A. She was slightly smaller; bulkier; about 60—about 70 feet I imagine, as I remember it.

Q. What kind of power did she have?

A. Single cylinder—I mean single screw, one engine.

Q. Gasoline?

A. Yes, sir.

Q. Any other houseboats?

A. Another, I don't remember the name; owned by the same man; I made several trips on that.

Q. Who owned that?

A. Mr. Fay.

Q. What is the rest of it?

A. I don't remember his initials: Father John's Remedies. A. J., isn't it?—A. J., I think.

Q. Well I didn't work for him, so I don't know.

A. Well I don't remember exactly.

Q. Any other houseboats?

A. I worked on a number of them; not as engineer, but installing the machinery, and testing it out, and work around the shipyard; a number of them?

Q. What shipyard?

A. I worked for Pelsang's; for Merrill-Stevens; Tracy.

Q. Any more?

A. No, not for any length of time.

Q. The Boomerang and one other, are the only other houseboats that you have been on as an engineer?

A. Houseboats, yes.

Q. I didn't quite understand your length of time on the Seminole. It began about April 1922, did you say?

A. About; during the month of April '22.

Q. And originally I put down in my notes that you left early in 1923, then you said something about 1927; which is right?

A. Why I possibly left her every year I was on, between '22 and '27, because only one year I served continuously through.

Q. When did you last leave?

A. '27.

Q. What month? Do you remember?

A. I don't remember the exact month; it was during the summer or early spring.

Q. You had not been on her continuously?

A. No.

Q. What did the Seminole do when you weren't on her? Was she laid up?

A. Not in the strictest sense of the word; no, sir. She wasn't laid up; the captain stayed aboard.

Q. Somebody stayed by her?

A. The captain stayed by, in the five years I was on her.

Q. And where was she moored?

A. Sometimes at Phipps' Dock; sometimes in Lake Worth, down below the bridge. We have laid up in Seybold's Canal, and in the Miami River at John Seybold's house.

Q. Which captain hired you in the first instance?

A. Captain Nelson.

Q. Was it Nelson?

A. Yes, sir.

Q. Now you said something about orders that you got from Mr. J. S. Phipps, and something about orders that you got from Mr. H. C. Phipps. Do you remember any particular order that you ever got from either of those gentlemen?

A. I can't quite get that straight in my mind. We got orders, continuously when Mr. Phipps was aboard; he would be issuing orders to do so and so, this and that. I remember one order in particular. I was laying up in the Miami River at Seybold's house; that particular summer I hadn't been on her that summer, but I was with her then; the mate and I were painting the boat deck, and we got a wire signed John S. Phipps, to have the boat down at Royal Palm Dock at seven o'clock that night, with a crew, serve supper for seven, and leave the next day for Dr. Tortugas. That was signed by him.

Q. Is that the only definite order that you can now recall?

A. Oh no, we had a number of them, but it is awfully hard to remember any one of them.

Q. I appreciate that. I simply want to know at the moment whether you can remember any other order about any specific thing.

A. We were up at Palm Beach one time, possibly I had gone up to get her in readiness for the season; it was before the season, as we call it; Mr. Phipps came down to the dock, handed me a ten dollar bill and told me to use his car, go to Miami and get a crew; he wanted a steward and a chef at least, to serve dinner that night to a party on the boat; this was in the middle of the morning. I came to Miami, picked up as many men as I could get, and took them back to Palm Beach, and we served dinner that evening. I remember the ten dollar bill distinctly.

Q. Well that's two, now. Any other specific orders?

A. Well I don't know exactly—I suppose there was plenty of them, but I don't recall any; how about telegraphic orders, or something of that sort?

Q. Well, it is twelve years ago, Mr. Brown.

A. I understand.

Q. And I don't want you to strain your memory too much; but if you can tell me of any specific order, I would like to know about it. Now you have given me two.

A. Well at one time I was working at Tracy's boat-yard, I got a message from the captain to come up and go to work; I wired back and asked him if it was a season's job or a few days. He wired back to come for the season; and I had been there a few days and I got a message from Mr. Phipps, signed John S. Phipps, to lay off the entire crew, they wouldn't use the boat. That was another order I remember that came signed by him.

Q. Do you remember what year that was?

A. No, sir, I don't; it was in the fall of the year.

Q. You wrote some letters after that, complaining about that, didn't you?

A. I think I—

Q. Didn't you?

A. Yes; I objected to it.

Q. You had been hired by the captain for the season?

A. Umh hmh.

Q. And you only had about two weeks' work?

A. Umh hmh.

Q. You only got about two weeks' pay?—The witness nods.

A. At that time; yes, sir; pardon me.

Q. And you were sore about that?

A. Sore? No, I wasn't sore. I was within my rights.

Q. You were angry, weren't you?

A. No; there was nothing to get angry about.

Q. You made a complaint about it, didn't you?

A. Yes.

Q. Who did you make the complaint to?

A. Well, before I had gone very far with the complaints, they wired me to come back to work. I went on up there and shook hands and went back to work.

Q. Who did you make the complaint to?

A. Then I made the complaint to George Osborne in the Palm Beach office.

Q. Anybody else?

A. To the captain.

Q. Anybody else?

A. I don't recall anybody else, possibly.

Q. What is your address now, Mr. Brown?

A. 705 Miller Road is the home address.

Q. Here in Miami?

A. South Miami.

Q. And what is your business address?

A. 555 to '61 Southwest 8th Street.

Q. Now you have also mentioned without giving particulars, and I appreciate it may be difficult for you to, after this lapse of time,—orders that you say you got from J. S. Phipps about various things. Let's talk about those. What kind of orders would you get from him?

A. Well for instance if we—you mean me personally, or the ship?

Q. I am talking about you, now.

A. The ship?

Q. You, Leslie Brown.

A. The only order I ever got directly from Mr. H. C. Phipps, I had been laying off Flamingo Dock for quite a while; we had orders to go to the Keys, I didn't know where we were going, and I didn't care; I knew we were going south. We started out and I had a terrible squeal in the engine room,—a whistle; I couldn't figure what it was; and Mr. Phipps came to the engine room, wanted to know what it was. I told him I hadn't located it yet, but I was still trying. We were going through the bridges, through the drawbridges, and I couldn't shut down either engine; and it had me worried. He says "Chief, do you know what it is?" I says "No, sir, I don't"; but I says "I will have to stop and find it." He says, "Well" he says "I will tell the captain to anchor, and you stop and find it, and we will go to a picture show instead of going down to the keys." He says "Now don't worry on my part, I will be perfectly all right; you go ahead and find that trouble and remedy it, and we will go in the morning instead of tonight." It was a very simple thing after I located it; he didn't need to go to the picture show. But he came to the engine room and told me.

Q. That was H. C. you are talking about?

A. That was H. C.; yes, sir.

Q. Now let's talk about J. S.; what kind of orders did you get from him?

A. Well Mr. J. S. would come down to the dock and talk to all of us; it was an audience he liked, and he would talk to all of us at one time,—that is including the captain and myself; I don't know as there was any particular orders to me.

Q. That is what I am asking you about, Mr. Brown; I would like to know whether Mr. J. S. Phipps ever gave you any particular orders, and what they were.

A. Well as I say, he ordered me to Miami several times, on several occasions, to pick up men, or crew, or to be ready to sail at a particular time, or something of that sort. I would generally get that through the captain, hearing him tell the captain, however, when, I would take that as an order, but, I wouldn't say it was direct to me.

Q. You might hear J. S. tell the captain "I want to sail tomorrow at the crack of dawn", or "I want to sail tomorrow night"?

A. Three o'clock, sir.

Q. Tomorrow night after dinner, or something like that?

A. Yes.

Q. "And we will be gone a week"?

A. Oh I have heard that on numerous occasions.

Q. All right, anything else that you remember hearing from Mr. J. S. Phipps, of any nature, in the way of an order?

A. Well, I was with him a month over in the Bahama Islands.

Q. On the Seminole?

A. On the Seminole.

Q. By the way, did you ever work on any other vessel in which the Phipps family were in any way interested?

A. Not directly; I helped on the Iolanthe quite a number of times.

Q. But you were never employed on her?

A. I was never employed; that is I wasn't on the Iolanthe's payroll, as I understand it; but I did work on that boat.

Q. I interrupted you; you were telling me about once at the Bahama Islands for a week.

A. A month, sir; and during that time it was very natural that we received a lot of orders from him; and I am trying to get it straight in my mind.

Q. Just what particular?

A. He had plenty of them that I have remembered, but I think you have sort of got me on a particular order, over there.

Q. Do you remember any?

A. Well sir, the only way I could answer that, is that every time he was on the boat he was absolute boss; he was the man in charge, and he would issue all the orders. Now I can't recall any particular order that he issued, any more than "Let's go here", and there, to go fishing, or to do something of that sort; which was in a general way; it wasn't directed to me personally.

Q. Is that what you mean when you say he was boss, that he was in the position, and he had the right to tell the master and the crew where to go and when to go and when to stop?

A. And when to hire a crew and when to lay them off.

Q. That is what you mean by—

A. Yes.

Q. Did H. C. Phipps ever exercise that authority at that time?

A. No, sir; never in the hiring and firing of a crew.

Q. J. S. is the one that did that?

A. He is the one that did that.

Q. Was Nelson the master all the time that you were on the Seminole?

A. Practically all the time; not all the time.

Q. Well, he was master when you began, and he was master when you left?

A. No, sir.

Q. He wasn't?

A. He left before I did.

Q. Sure about that?

A. Yes.

Q. Did Mr. J. S. Phipps ever give you any order about any matter of construction in the engine room?

A. Not that I remember.

Q. Did he ever give you any order to do anything in respect to maintenance or upkeep to the engine room?

A. To answer that it will sort of be a roundabout way, because it was simply a case of—

Q. Did he or didn't he, Mr. Brown?

A. I can't remember any particular—any one case where he actually issued an order to do or don't do anything; it was a case of, refer to the captain.

Q. Are you telling me that, as engineer of the boat, when you thought you ought to have something done in the engine room, you went over the captain's head to Mr. Phipps with a request for authority to do something?

A. I have done it; yes, sir.

Q. And you are telling me that when you did that, Mr. Phipps referred you back to the captain? Is that right?

A. Back to the captain; yes, sir.

Q. He never once passed upon that himself?

A. Now I can't recall any instances where he went directly over the captain's head. We have argued between the three of us on a number of occasions; what decision we came to I don't remember.

Q. Having argued among yourselves, you reached a decision among yourselves; is that what you mean?

A. Oh yes, generally.

Q. And did what the three of you agreed to do or not to do; is that right?

A. That is generally the way an argument ends up; yes, sir.

Q. I am talking about these; is that right?

A. Yes, sir.

Q. Do you recognize this thing, libelants' Exhibit 11? Did you ever see this before?

A. I don't deny I have seen all sorts of combinations; that possibly was one of them; I can't say that I remember that particular one. No, sir, I can't say that I absolutely remember that particular hookup.

Q. You have spoken of a valve to draw off gasoline on the Seminole. Does this contraption resemble what existed on the Seminole in your day?

A. Oh yes; yes, sir; that resembles it, but I wouldn't say that it is part of it.

Q. Can you say it was the same, or not?

A. No, I couldn't say it was the same; I don't remember that particular hookup.

Q. What material is that device made of?

A. That is a Globe valve, an angle valve, union, nipple, bushing.

Q. What was that all made of?

A. These valves are made of cast brass; that nipple there I am afraid to say; from the light on it it looks like—this one here looks like it might be iron, from the looks of the rust.

Q. Want to take your knife and scratch it?

A. I would feel better if I get some glasses on. Have you got a knife?—this is a brass nipple there.

Q. That is out of the T-valve is a brass nipple?

A. Out of the angle valve. I would call that an iron nipple in there; see the rust piled up on it? Can't break it through with this knife.

Q. An iron nipple between two valves?

A. Between the union and the angle valve—between the union and the bushing, rather.

Q. Now I show you Exhibit 17; does that resemble anything that you have seen on the Seminole?

A. Yes, I would say it resembles it.

Q. Would you say whether it's the same or not?

A. I wouldn't identify a thing like that as positive; that's the same general idea of a hookup; that was the strainer. Let me try to get this straight in my mind now, where this one would come from. It looks like the port side; yes, port engine.

Q. You don't need to read the legend.

A. I didn't mean to do that, pardon me; but I mentioned it first. One of those went to the auxiliary set, as I remember, and one to the main engine.

Q. Is that the size of strainer that was for the main engine?

A. Yes, sir.

Q. Or, for the auxiliary?

A. To the best of my recollection, the strainer was no bigger than that; it was about that same size on the main engine.

Q. Are they the same size for the main engine and the auxiliary?

A. Same pipe connections.

Q. Were the strainers the same size on the main engine and on the auxiliary?

A. Yes, sir; on the auxiliary as I remember there was one branch line taken off for the auxiliary, and for the main engine, on the same strainer.

Q. What kind of pipe is that?

A. Have to have the knife again.—Brass in there. That's brass pipe in there now, sir.

Q. Well I show you Exhibit 2; I hesitate to ask you whether that resembles anything you have seen on the Seminole, because it is so twisted up now: but does it?

Is that the sized pipe that was used on the Seminole for any purpose?

A. Yes.

Q. What purpose?

A. They used that for gasoline; about the same size—that is the same size; quarter inch pipe. This is a quarter inch pipe.

Q. What kind of pipe?

A. That is a brass pipe throughout. That is brass pipe and brass fittings.

Q. Are you sure, Mr. Brown, the gasoline lines when you were on the Seminole were iron pipe?

A. Absolutely positive—the majority of them, if not all.

Q. Did you ever see any brass pipe in the engine room?

A. Yes, sir.

Q. Of the Seminole?

A. Yes, sir.

Q. But most of it in the gasoline lines was iron pipe, was it?

A. That was the best of my recollection.

Q. Did you complain about that?

A. Yes, sir.

Q. Were there leaks?

A. There were some few leaks at different times; I had trouble with them.

Q. How many different times did you find any leak of any character in the gasoline lines of the Seminole?

A. I would be afraid to answer.

Q. Do you remember very many? How many?

A. Oh, a few, I would say; quite a few. That is rather indefinite.

Q. That is frightfully indefinite, Mr. Brown.

A. I don't know as I could do any better.

Q. Did you have one every day?

A. No.

Q. One every year?

A. —naturally not.—I don't know.

Q. Did you ever have a real gasoline leak where liquid gasoline flowed out from the pipes?

A. No, only from carburetors, not from pipes. I have never had it from pipes, flowing out in a stream, except—pardon me; the way those tanks were rigged up, when we would fill gasoline from the deck I have had a stream come out,—overflow.

Q. Any leak in operation?

A. Not in ordinary run of operation of the boat; there was no serious leak, except as I said before, just small screwed pipe leaks, which you are bound to have in screwed pipe connections, whether they are in brass or iron; more serious in brass than iron.

Q. Those are seep leaks you speak of?

A. Seepage.

Q. You said something about overflow; tell me about that, when did that happen?

A. Overflow? From the gas tanks?

Q. Yes; you remember I asked whether you had any liquid leak of gasoline, and you said, overflow; that is while you were filling?

A. Filling the tanks.

Q. Where was the overflow?

A. The overflow came from the top of the tanks and out overboard, over the side of the vessel; but it wasn't of sufficient size, it was only a half inch pipe—possibly three quarters.

Q. You mean the overflow pipe, now?

A. Yes; only half or three quarter pipe; and we had inch and a quarter—inch and a half filling pipe.

Q. When the tanks got full?

A. When the tanks would get almost full, they would get an air-blow, out through this overflow, and the result

would be the gasoline would puff back through the fill down there and flow into the engine room around the gasoline—

Q. How did it get into the engine room?

A. Because, it came through the deck; no provisions for caulking.

Q. Just a hole with the gasoline line through it?

A. It leaked gas; I have had gas come down through there.

Q. At the overflow?

A. Yes, sir.

Q. When the gasoline line wouldn't take gasoline as fast—

A. It would pour out on deck and some of it would go to the engine room; most of it would go out of the scuppers; most of it would pour across deck and out of the scuppers.

Q. That is the only leak you have had of liquid gasoline? Right?

A. No; I would say the carburetors were along, the general run of carburetors of those days, which would be that you couldn't trust the main engine or the auxiliary to shut them down with the spark; I would always shut them down with the gasoline line. If at any time you shut down with the spark, you would get a carburetor full of raw gas.

Q. You mean no carburetor of those days was wholly trustworthy in type?

A. I don't say there was none, but I never met very many of them.

Q. You said something about a pan under the gasoline tanks. One pan is all you recollect, is that correct?

A. The best of my recollection, that is all that was under there; one pan under the four tanks.

Q. Isn't it a fact that there were two pans; the two port tanks set in one, and the two starboard tanks set in the other?

A. Most anything is possible, sir, but that is the best of my recollection, it was one pan; it may possibly have been two, but I wouldn't—that pan is rather indefinite in my mind, any more than the gasoline tanks were set in pan; because I remember one pan; it is very possible it was split.

Q. Was the pan as big as the compartment?

A. It must have been mighty close; it couldn't have been as big or they possibly couldn't have gotten it in; but it was mighty close; mighty close.

Q. Were the edges of it riveted to the compartment—bulkheads?

A. Not as I remember.

Q. How was it held in place?

A. As I remember it was set up on frames of channel or angle iron of some description in there. It was framed up with metal frame, and what cushions they had between the metal and the actual tank, I don't remember—or the pan; I don't remember.

Q. Was the pan rectangular or oval, or how was it shaped?

A. It seems to me it was a rectangular pan.

Q. How far below the gasoline tanks, bottoms, was the pan?

A. That has worried me quite a bit too; it seems to me—I know the pans were setting in it, right in the pan.

Q. Do you mean that the tanks were setting right on the pan?

A. In.

Q. Was the metal of the tanks against the metal of the pan, or was there something across the bottom of the pan for the tanks to sit on?

A. That is what I just mentioned, that I don't remember what kind of a cushion there was under the gas tanks. I can't—I have been trying to think of that; I

have been trying faithfully to think of it, trying to figure out whether or not there was a cushion or something between those two, to keep down corrosion or such as that.

Q. I have the advantage of you, Mr. Brown, because I have been all through there within the last ninety days; but I want to know what you remember.

A. So would I like to know. I have tried to remember just that particular point, about how those tanks were set in that pan. There was a pan under the gas tank; we know that, I know that; but how they were set in there I don't remember; whether there was a wooden strip or some other composition strip, or whether it was metal to metal; and that was my impression, metal to metal.

Q. How close did the ends of the pans come to the side bulkheads of the compartment? That is to say, how near the port skin of the Seminole was the port end of that pan, or whatever pan it was?

A. Well sir, I couldn't answer that definitely, because I opened that door on the port side, as I said before, and I looked in there, and I left the door open for—after I finally got it open I left it open on every occasion possible, to ventilate that compartment; but I still couldn't look down to do any good and I don't remember whether I—exactly the distance; I know it was very, very close.

Q. Where was that little door?

A. It was about—oh now—

Q. First, in which bulkhead of the tank compartment was it?

A. It was in the side of the vessel, in the wood side, maybe 20 or 30 inches above the top—above the top rub mold, on the wood side of the old original coal bunker, or the gas tank compartment.

Q. In order to get to it, you had to go out on the deck?

A. On the dock, or tie a line on you and stand on the rub mold with the line tied on the rail.

Q. Did you ever put your head in there and look through?

A. Yes, I stood on the dock one day and tried to get my head in, and couldn't get it past the tank; as I remember, I tried to get into it one day, but I couldn't get into it.

Q. About how big was that little window?

A. Oh I don't know, 15 by 20.

Q. Well, you could get your head through then?

A. Yes, through the door, through the opening; I mean I didn't have room to go after—

Q. Not your body?

A. I could have got my body through the door, but I didn't have room inside after I got through the door, if I could have. It wasn't the size of the door that kept me out.

Q. When you looked in there did you notice how close to the skin of the vessel these tanks came?

A. I suppose I did.

Q. Do you remember?

A. Not necessarily, no sir; not exactly. I really don't remember how close they were.

Q. You spoke about a little square hole in the forward bulkhead of the engine room. Do you remember where that hole was with reference to the tanks—to the pans?

A. That hole was just about—let's see; middle of the engine room wouldn't be middle of the gas tank compartment; it would be over to starboard a little bit.

Q. Which was it in the middle of, now?

A. I never did measure, but it was close approximately to the middle of the engine room.

Q. Isn't it a fact when you looked through that hole you could see into the pan or pans under the gasoline tanks?

A. When you looked into that hole?

Q. Yes.

A. No, sir; after you crawled through the hole, got into that compartment, you could look up to the tanks.

Q. Isn't it a fact that from the engine room you could look through that square hole, and see into the pans under the gasoline tanks?

A. No, sir.

Q. You are sure about that?

A. I am sure; positive.

Q. You were asked, I think—I am not sure about this, whether there was any drain line from that pan or those pans; do you remember about that?

A. I never found a drain line on them, in any way.

Q. You never saw one?

A. No, sir.

Q. I show you Exhibit D for identification; you know Captain Nelson's signature, don't you?

A. I don't know that I do. I have seen him—

Q. So that you can tell whether that's it?

A. Looks about like it.

Q. Do you recognize that as the general outline of something that might be the Seminole?

A. Roughly.

Q. You notice the compartment and the word Tanks in there?

A. Umh hmh; yes, sir.

Q. Do you notice it says over here, 'tanks standing in drip pans and leading overboard'?

A. Umh hmh.

Q. Does that refresh your recollection as to whether or not there was a drain overboard?

A. It doesn't convince me that there was.

Q. You mean merely because Nelson says it is so, doesn't make it so?

Mr. Botts:

There is no proof yet that Nelson says it was so.

A. As far as that is concerned, I never saw a drain under those tanks, of any kind; where would it drain? Overboard?

Q. Well, you are the engineer; do you say that there wasn't any?

A. Yes, sir, I say there was none. I don't remember a drain under there.

Q. What was the space under the pans used for for, Mr. Brown?

A. Storage of lubricating oil, and parts—repair parts, pipe fittings, such as that.

Q. And the water tanks were forward of that little compartment, were they?

A. Yes, sir.

Q. In the bilge?

A. In the forward bilge, under the cabin.

Q. Was that bilge continuous as you remember it, or was there a water-tight bulkhead or a solid bulkhead?

A. There was a bulkhead, not water-tight or solid, between the gas tank bulkhead, that is the forward end of the gas tanks; the bulkhead came down to the ship's frames, but it was not water-tight or solid.

Q. You mean there were openings there?

A. Large openings.

Q. There was a hole in that bulkhead corresponding to the hole between the engine room and the space under the tank compartment, was there not?

A. Not as much; you couldn't crawl through it.

Q. You say a man couldn't get through it?

A. Couldn't get through it from the forward bilges, he couldn't go to the engine room through the bulkhead.

Q. Sure about that?

A. Not when I was on her he couldn't.

Q. Quite sure about that?

A. Yes, sir.

Q. Now you mentioned a window on the port side of the engine room; do you remember a window on the starboard side?

A. It went to the passageway between the after and the forward end of the vessel.

Q. There was a window there?

A. Only from the engine room to the passageway.

Q. There was a window there?

A. Yes, sir.

Q. How big was that when you were on board?

A. Quite large; 30 or 36 inches square.

Q. Did it slide down into the deck, down in the bulkhead, or how did it open?

A. It hinged into the engine room.

Q. Did it swing forward or aft, to open?

A. The hinges were on the forward side.

Q. Was that made of steel?

A. Wood frame.

Q. Glass, you mean?

A. Wooden frame, glass window.

Q. Do you remember what windows there were in the alleyway outside the engine room?

A. No, sir; there were one or more windows in there—one or more.

Q. One or two, eh? Now I show you libelants' Exhibit 5, a photograph taken some time after the fire, and ask you if that looks like a portion of the forward engine room bulkhead of the Seminole, and one of her tank valves?

A. Well, it looks a great deal like it.

Q. Well I think it is fair to say to you that that is a picture of the Seminole.

Mr. Matteson:

I object to that.

A. I should judge that is what it was after the fire. Of course I never saw it in that condition, but the holes as I said were $2\frac{1}{2}$ or 3 inches in diameter, and there were pipes coming right out of the bottom of the tank, and the tank showed a riveted bottom seam, which would indicate a concave bottom.

Q. You can see the bottom of the tank there, can you not?

A. Yes, sir.

Q. Isn't it a fact that you must be able to see down into that pan through that opening?

A. Through that opening?

Q. Yes.

A. Yes, down just a little bit, if the pan were there; I doubt whether you could see the bottom of the pan. But pardon me, weren't you asking about that square opening into the engine room?

Q. Yes; I will come to that. Isn't it fact you could see the pan through that opening?

A. Yes.

Q. There were four such, weren't there? One for each tank?

A. Two in sight, I think.

Q. There were four such openings, one for each tank, weren't there?

A. Yes, one for each tank.

Q. There wasn't any glass gauge in the engine room when you were aboard, I think you said?

A. Gasoline gauge?

Q. Glass gasoline gauge.

A. No, sir.

Q. No long glass gauge?

A. No, sir.

Q. Now what did you do when you found these weeping leaks?

Mr. Botts:

Excuse me, Mr. Underwood; he used the word, seeping, I think, and Mr. Matteson understood; I don't believe he in the first instance used the word; I think it was a misunderstanding of Mr. Matteson's. I may be mistaken.

Q. Well, let's get our word right.

A. We will still use the word, seeping leak, or seep leak.

Q. We will use your word. Just what do you mean by a seeping leak? You mean it drips liquid gasoline, or what do you mean?

A. Not necessarily. It would be a damp, wet spot on the pipe; a seep—just seepage, is the way I have always understood it and used the word; it doesn't necessarily mean that there is a continuous dripping or dropping of the gasoline, but it could be enough there to worry you, or to call your attention to the fact that the joint wasn't tight.

Q. When you find a condition like that, what did you do?

A. Well, repair it, and first chance I get.

Q. And stop the leak?

A. Temporarily.

Q. How did you repair it?

A. Well most of the time it was litharge and glycerin; if not it was shellac.

Q. You wouldn't break the connection?

A. On a number of occasions I would break the connections, if it was anywhere handy we would have to do it, to repair it properly.

Q. Did you repair it properly?

A. Yes, I have done that.

Q. Did you ever leave it improperly repaired?

A. I expect there was a lot of them improperly repaired.

Q. Did you leave it improperly repaired?

A. Not to my knowledge.

Q. Whenever you repair anything you repair it as properly as you knew how?

A. With the material on hand; yes, sir.

Q. Now you said, I think, that you tried to get Capt. Nelson's approval to take out this iron pipe and install copper tubing?

A. That was my preference, copper tubing.

Q. Did you take that up with Capt. Nelson?

A. Oh yes.

Q. And he told you that—he wouldn't let you do it, is that right?

A. It was never done.

Q. Did you ever say anything to John S. Phipps about the copper tubing in there?

A. I would have to be mighty sure on that, but I can't remember any particular instance where I called his attention to it personally. I have talked to him about the conditions in the engine room—about the leakage we had of gasoline; whether or not I requested him to allow me to put in copper tubing; I wouldn't swear to that; but I know that discussion has come up between us, in regard to the way the engine room was piped.

Q. Now you say that you spoke to him about leaks. Do you remember what he said?

A. Well that particular time I don't remember—

Q. Do you remember what he said?

A. It generally—tell me the captain was king—that's the way it generally wound up, unless the three of us were together, then we would argue, if the three of us were together and we would bring up something of that sort, we would have a friendly discussion, more or less.

Q. Did you think this was a dangerous condition in the engine room?

A. Well—

Q. You lived with it five years. Did you think it was a dangerous condition?

A. I would always consider gasoline dangerous.

Q. Any gasoline installation is dangerous, is that right?

A. No, not any. I have seen some gasoline installations that I considered just about perfect. But gasoline itself is dangerous; gasoline vapor is dangerous; and as long as these conditions did exist, and I could do nothing about it—

Q. You could have left the boat, couldn't you?

A. Well—

Q. You didn't have any long term contract binding you to employment there, did you?

A. I had a family to support.

Q. You didn't want your wife to be a widow, did you?

A. I don't know as it made much difference in that respect; it was a case of make a living for her; and I do things today to make a living for my family, and will continue to do them; they might be dangerous.

Q. Did you regard that as a dangerous installation?

A. Well, I regarded it in this way, sir; and it might just as well be threshed out, whether or not—there was a leak; the carburetors would leak if you shut them down without shutting off the gas, they would drip. On numerous occasions the lighting plant carburetor developed a leak while it was running; that is an absolute fact.

Q. Did you fix those things?

A. Yes, fixed them, and they would stay fixed—send them to the shop and have them completely overhauled, as far as the carburetor was concerned; and during the course of the next season it will do it again—carburetors in those days.

Q. As the result of operation, I suppose?

A. As the result of the vibration, or something.

Q. And all carburetors will do that—or practically all, won't they?

A. I would say a lot of them did in those days; a lot of them did.

Q. Now go on; I think I interrupted you, when you were telling me something.

A. And I would keep as I said, Pyrene ~~around~~ there; I had four or five Pyrene cans besides five gallons of Pyrene liquid, and I have on numerous occasions dumped it into the bilges, for safety, when I would find a leak, or when we were filling up the gas tanks and the fumes would get too heavy, or such as that. It may have been foolish, but I have poured Pyrene in the bilges for safety.

Q. Now let's get back to these difficulties that you say you had in the engine room; these seeping leaks; did I get the right word? Do you think now of anything else that you want to criticize about the gasoline installation of the Seminole?

A. I don't know as I was really criticizing; I was answering questions to the best of my ability, sir; and if there is any there—

Q. Of course it is wrong to have leaks, in your opinion, isn't it?

A. Why certainly.

Q. Was there anything else, in your opinion, wrong about the gasoline system of the Seminole?

A. The overflow pipe wasn't large enough.

Q. Anything else?

A. I can't remember that there was any drain on the pan, and I looked for it.

Q. Anything else?

A. Well the installation of the tank, there was absolutely no way to look at them or get to them or to see the condition of them.

Q. Anything else?

A. Oh I don't know; in regard to taking gas in the engine room, I always figured that we ought to have an auxiliary tank for gasoline on deck, somewhere in the open. I talked to the captain on numerous occasions, but I never get any further than the Captain with it.

Q. You mean to fill through?

A. To have an extra supply for the launches, or to have some means of getting that gasoline out of the engine room. I have talked to him on numerous occasions, but at the time I left we were still taking gas from the tanks in the engine room, for the boats.

Q. You don't say you talked to J. S. Phipps about that?

A. No, I don't say I talked to J. S. Phipps about that.

Q. Did you ever talk to J. S. Phipps about there being no way to look at the gasoline tanks?

A. No, I don't think I ever did.

Q. You haven't said that you ever told him that there was no overboard drain from the pans under the tanks?

A. I didn't consider it necessary to tell Mr. Phipps all those things.

Q. You haven't said that you ever told him about the size of the overflow pipe?

A. I don't remember saying that I ever told him that; I don't think I—I know I didn't talk to him in regard to that, unless it was for some particular—now we can go back into that; some particular time we filled up while he was there and he wanted to know why the gas ran over back—which he would have if he had been there. I would possibly have answered him "the overflow pipe is not large enough to take care of it."

Q. You are not remembering something, you are stating what would have happened if something else had happened; is that right?

A. It is just about as vague in my mind as—

Q. You don't remember that that ever happened, do you?

A. No, I don't say that I do.

Q. Do you say that you talked to Mr. J. S. Phipps about leaks in the gasoline lines?

A. I have answered that three or four different ways. I suppose, in the course of different questions. What I

am trying to bring out, sir, is that I tried my best, to the best of my ability, to take care of the boat; I could get no cooperation.

Mr. Underwood:

I move to strike that out, your Honor, as not responsive, and ask the witness to answer the question which I put. May the question be read?

Mr. Matteson:

It is in explanation of his testimony.

The Court:

It wasn't in explanation of an answer. The whole thing was explanation and not an answer; so I think the motion is well taken.

Mr. Underwood:

Will you read the witness the question?

(Last question and answer read.)

The Court:

Well, if it is not clear, you can go back into that again; but I will adhere to my original ruling; that answer is stricken.

Mr. Matteson:

The question is to be answered over?

The Court:

Yes.

Q. Do you want the question read again, Mr. Brown?

The Court:

If you want to explain your answer you may do it, Mr. Brown; but answer the question, and then make your explanation.

A. I think I understand the question; but as I—

The Court:

You will have to answer the questions directly, and then if you want to make an explanation you may.

A. I guess I could best answer that question, I don't remember—

Q. Is that your answer?

A. Yes.

Q. Now captain, was—

Mr. Matteson:

If your Honor please, I am sure the witness knows he can explain that if he wants to?

The Court:

Yes, he can explain his answer.

A. Well, as I stated on numerous occasions I have taken up different things with Mr. Phipps; but to answer that question direct as to whether I took up that particular gasoline leak, or something of that sort, I don't remember. But on numerous occasions I have talked to him about different things that were needed in the engine room; on numerous occasions the captain and Mr. Phipps and myself were together in these friendly arguments; and the result was generally that the captain's word was law.

Q. The captain made the decision?

A. No, his word was law in this way, that Mr. Phipps would refer me to him, or, he would ask the captain

what he thought about it. In some few cases I was allowed to render a decision. But the captain put this stuff in.

Q. Have you finished your explanation about this particular question?

Mr. Botts:

Let him go ahead.

A. He installed this engine room and was proud of it; and it is common sense that any changes I wanted to make in there were against his wishes. So that I think answers it to the best of my ability. If there is anything else—

Q. All right, I want to clear up one point. You have said that Mr. Phipps told you in substance or in words, I have forgotten which, that the captain was king?

A. On several occasions he has used that expression.

Q. He has; all right. Now when you would go to Mr. Phipps with one of those problems that you don't remember about specifically now, he would refer you to the captain, if the captain wasn't present himself; is that right?

A. In the majority of cases.

Q. And if the captain was present you would all three discuss the situation?

A. Yes.

Q. And was Mr. Phipps guided by the captain's wishes?

A. In the majority of cases.

Mr. Matteson:

We object to that. I think he ought to state more specifically than that, what he means, rather than stating the general conclusion.

The Court:

You mean, the question?

Mr. Matteson:

This testimony as to mental operations of another man; that is the point.

The Court:

I overrule your objection.

Q. You say that Mr. Phipps was guided by the captain in the majority of instances. Do you remember any specific instance where Mr. Phipps overruled the captain.

A. That would be rather hard to answer.

Q. Well, you have at least three possible answers; Yes, No, or I don't remember. Does one of those fit?

A. I don't remember.

Q. Now I want to ask you a question too about this pump that you say was installed for pumping gasoline out of the tanks into the boats.

A. No, sir; that was installed for a bilge pump.

Q. And a connection was made?

A. Connection was made so that you could use it for pumping gas into the boats.

Q. Where was the connection tapped into the gasoline line?

A. Somewhere along the manifold.

Q. Do you remember where?

A. Along the manifold—of this gasoline manifold, from the gas tanks.

Q. How did the line run from the manifold, and where did it run?

A. I don't know as I could give you that exactly how it ran. But as I remember that pipe ran from the starboard side over around the starboard tank, and came back to the bilge pump, which was on the shelf to the port side of the log deck.

Q. Where did the line go from the pump?

A. Used a hose.

Q. You mean a flexible hose?

A. Yes, we used a flexible hose, as I remember, a rubber hose from the pump to the boat; hose out of the window:

Q. Where did it go, out of the window?

A. Yes.

Q. What was the nature of the connection between the manifold and the bilge pump? Is that a flexible connection or a solid connection?

A. That is just the point that I was trying to get straight in my own mind, sir, and I am conscientious about it. I don't remember whether or not that was a flexible joint in there at any place or not. It seems to me, the best of my recollection, that was put in solid pipe.

Q. But you are not sure?

A. It was a connection between the gasoline tank and the bilge pump.

Q. Was it made when you wanted to use it, and broken when you no longer wanted to use it?

A. No, sir, just shut off the valve.

Q. Of course you don't know whether that existed in 1935 or not?

A. No, I don't know that.

Q. You have said, Mr. Brown, that you didn't like the idea of this business of drawing gasoline off in the engine room. I think you stated that the reason for that was that it engenders gasoline vapors; in that right?—or it might spill?

A. You get a gasoline vapor any time you draw gas into an open vessel, or expose the gas to air; you have got a gasoline vapor; there is always danger of spilling.

Q. Your reason for thinking there ought not to be in the engine room some such drawing-off valve, as this, is because in use it engenders vapor, or you might spill liquid gasoline; is that right?

A. Which in turn would generate a vapor.

Q. Is that your reason?

A. Yes.

The Court:

Was this bilge pump forward or aft?

A. It was under the shelf, bracket built to the forward bulkhead, and set up a matter of, on a little better than three feet off the floor plates.

The Court:

Well, it led from the tank on the starboard side?

A. Starboard side.

The Court:

Forward to the bilge pump, or aft?

A. No; right across; followed the bulkhead pretty well.

Q. The bilge pump was on a shelf on the forward bulkhead of the engine room?

A. Yes, sir.

Q. There was a little toilet in the corner, the port forward corner; wasn't there?

A. Yes, forward, end of the work bench.

Q. And then going to starboard from that, you had another little bench, and your bilge pump?

A. Under that.

Q. Is that correct?

A. That is just about right. That bench was—or shelf, was built on the forward bulkhead, and continued almost from the toilet to the log deck.

Q. I show you libelants' Exhibit 10, which I think it is fair to say to you was taken in the Seminole's engine room from a point perhaps amidships, looking to the port side.

A. Yes.

Q. Now you see those two brackets there on the forward bulkhead?

A. Yes, sir.

Q. Are those the brackets that the shelf sat on?

A. Approximately that's where it was.

Q. And the pump you speak of was on that shelf?

A. On that shelf; the shelf extended over both ways beyond the brackets a little bit; and here was the toilet.

Q. Indicating the forward port corner of the engine room.

The Court:

Get your blueprint; let me see it from that standpoint.

Q. Will you indicate where the bilge pump was?

A. Right in here at your log desk, that shelf would start.

Q. You will have to bear down on that.

A. I don't want to do that until I find out what I am doing; get it straightened out a little bit. I wouldn't say how much space was in there, but there was a little. Well this generator that you see here, this auxiliary plant, you could sort of look under and around, to get to this here exhaust pipe, ran out of the side there; the auxiliary plant was under the shelf.

Q. Referring to Exhibit 10 as to the auxiliary plant.

A. We were referring to this shelf, and I was trying to get the length of it here; although it is not as I can see very particular how long that should be over there.

Q. Just approximately.

A. Oh that ran from—say here is your center line, your log desk is right in here, about like that; something on that order; and the bilge pump was here.

Q. Driven by a motor—driven by a small direct current motor.

The Court:

Was this bilge pump in the engine room?

A. In the engine room, and up three feet above the plates, up there on the shelf.

Q. Now draw a line from the thing the witness called the desk, and write Desk—Log Desk?

A. Log Desk. That hole should show on there somewhere.— Right in here.

Q. And on this place the witness has called Bench, I will draw a line from that.—

A. Shelf.

Q. I will draw a line from that and call it Shelf.

The Court:

Where was that toilet?

A. Right here in this corner; let's see, did we raise that the least bit, to get it above the water line? Seems to me we had to raise the toilet to get in above the water line.

Q. In this corner?

A. Yes, sir.

Q. May we put a circle there?

A. Yes; because I would come out of my room, across the work bench; just had a curtain around it; there was no well around it.

Q. Now draw a circle in the forward port corner and draw a line from it and write the word Toilet on the blue-print Exhibit A. Now on this shelf which you have spoken of, the bilge pump is at the starboard end of the shelf?

A. Yes.

Q. And the direct current motor was just to port of it?

A. That is close enough; yes, sir, that is right.

The Court:

Until that time, I had in my mind placed the bilge pump in the bilge of the vessel; so that was helped to

clear me up. The bilge pump was at that location when you first went with the vessel, was it?

A. No, sir; that was put in after we took out the old Clothel ice machine, and the bilge pump was the original Clothel compressor, the rotary pump or vane pump.

The Court:

What had been used for pumping out the bilge prior to that?

A. We had a connection from the main engine.

(By Mr. Underwood):

Q. You have spoken about the conduit in which the wires, electric-wiring wires were carried from one part of the vessel to the other; as I understand it, they were in conduit in the engine space?

A. Yes, I would say the majority of them were; of course on the switchboard itself there was ordinary switchboard work.

Q. I mean where the lines left one box and went to another box, they were in conduit, weren't they?

A. Yes.

Q. And that was metal conduit?

A. Metal conduit.

Q. You said something about that being rusted. Do you mean rusted through so that the wires were exposed?

A. Exposed.

Q. By wires exposed, you mean that the insulation on the wire was visible?

A. Yes; no protection but the insulation on the wire itself.

Q. You don't mean that the insulation was broken at any place, do you?

A. No, sir; I didn't see any of that.

Q. When you found such a condition, what did you do about it? Did you fix it?

A. Temporarily; reported it, tried to get some new wires to run in—that is new conduit; the captain wouldn't allow it.

Q. When you say you repaired it temporarily, you mean, put a patch around it?

A. Put a wooden splint on the side, and taped it, and gave it a coat of shellac, wherever I would find a weak place.

Q. Now you haven't said that you mentioned that to J. S. Phipps, have you?

A. I might have said that I mentioned it to him—

Q. I am sorry, I naturally interrupt you, but what I want, Mr. Brown, is not what you might have done, but what you can say here on the stand today under oath, did happen. I appreciate your difficulty, and all the years that have gone by, but it is my job to search out your memory, and that is what I am doing.

A. I will assist you every way I can; but I can't be too definite on some subjects, except for the fact I do distinctly remember mentioning the fact that the wiring on the ship was in terrible shape, and I requested that we have it repaired; and the discussion did come up between Mr. Phipps and the captain and myself at some time or other; when I don't know.

Q. You say you mentioned it some time to Mr. Phipps, that the wiring was in bad shape, did you?

A. I feel confident,—I am positive of that, that I did mention it to him.

Q. Where?

A. Well, those conferences between us were generally at Palm Beach, at the dock; and that's about as near as I can come to it.

Q. Where were you on this occasion?

A. I can positively say it happened on the dock at Palm Beach,—at his dock.

Q. You remember that now, do you?

A. I feel sure I did.

Q. Your memory is getting a little better about this conversation, is it?

A. I have been thinking and doing a powerful lot of studying about it too.

Q. How long have you been doing all this thinking and studying?

A. Since I have been here this morning.

Q. Not before?

A. Not in regard to Mr. Phipps. I don't remember him—that is, I didn't try to figure that out.

Q. You just began to think about that this morning?

A. Just began to think about Mr. Phipps and when I talked to him I didn't realize what I was up against. I am not familiar with Court procedure, and I am doing the best I can to give you the proper answers, and I will continue to do so.

Q. When did you first start thinking about Mr. Phipps in connection with the Seminole?

A. Oh a couple of weeks ago.

Q. The first time?

A. Umh hmh.

Q. Now did you happen to start thinking about it then?

A. Well I was served a paper a short time ago to come down here as a witness.

Q. Yes.

A. And—

Q. You haven't talked to anybody about that?

A. Oh yes, yes.

Q. Who did you talk to about it?—Did you hear me?

A. Several friends of mine that I have—

Q. Who?

A. Well I have talked to Mr. Matteson about it.

Q. Who else?

A. Mr.—

Mr. Dyer:

Dyer.

A. Mr. Dyer; I didn't even remember his name.

Q. Who else; Mr. Brown? Don't be so reluctant, Mr. Brown.

A. I am not holding back. Mr.—I can't think of his name, back there; Tomlinson or Thompson.

Q. And that just began about two weeks ago?

A. Roughly; maybe a little longer.

Q. Well now, you tell me the time; when?

A. I haven't got any record of it, sir.

Q. Have you any recollection of when?

A. Well it may have been more than two weeks; it may have been a month, so far as I can say. I have got no record of the date.

Q. Was it two months?

A. I don't think so.

Q. Was it this year or last year, the first time?

A. This year.

Q. Sure about that?

A. I think so.

Q. And where did the first conversation take place, and with whom was it?

A. I can say I don't remember, on that, because I fail to remember whether or not I was approached at the laundry or at my home, or over telephone.

Q. Now you remember distinctly though, that you had this conversation with J. S. Phipps about rewiring this vessel, or his dock at Palm Beach, fifteen years ago—or not fifteen, but seven or eight years ago?

A. Yes, that stuck in my craw.

Q. Is that right?

A. That stuck in my mind.

Q. What time of day was your conversation with Mr. Phipps?

A. I don't remember that.

Q. Was it raining or was the sun shining?

A. I don't remember that.

Q. It doesn't always shine in Palm Beach, does it?

A. Not always.

Q. Were you just coming back from a cruise, or going out on a cruise, or was the boat laid up?

A. I don't remember.

Q. Did that conversation take place?

A. Yes.

Q. You still say that.

Mr. Underwood:

Let the record note the laughter (At table of counsel for libelants), and my feeling that laughter is appropriate at that answer.

Mr. Jones:

An old trick.

Mr. Underwood:

Must have hit the bird, or the bird wouldn't flutter.

Q. You said something about an electric light that was under these gasoline—under the trays or pans under the gasoline tanks; I don't quite understand where you say that was, Mr. Brown.

A. About amidships.

Q. In the compartment underneath the tanks?

A. Yes.

Q. You have used that light from time to time?

A. Used it every time you went under there.

Q. That is the way you got your light?

A. Yes, sir.

Q. You had occasion to go under there frequently when the vessel was in use?

A. Oh yes.

Q. You could tell by looking in those pans, or that pan, whether the gasoline tanks were leaking, couldn't you?

A. Well, if they were tight and the gasoline was in there at sufficient depth, you could see it.

Q. Did you ever see any indications that those pans were not tight?

A. No, sir.

Q. Did you ever find any gasoline in them?

A. No, sir; never did.

Thereupon Court recessed until 2 p. m. of the same day.

March 20, 1939, 2:00 o'clock P. M.

Conveyed pursuant to recess.

Appearances same as heretofore noted.

734 LESLIE TYLER BROWN produced as a witness by the Libelants, resumed the stand and was examined and testified further as follows:

Cross Examination (Cont'd.)

By Mr. Underwood:

Q. You told me that Captain Nelson hired you in the first instance; right?

A. Yes.

Q. Which one of you left the service of the Seminole first according to your recollection?

A. Captain Nelson left before I did.

Q. Are you sure about that?

A. Yes. That is my answer, sir.

Q. Do you remember the circumstances under which you left the employ of the Seminole?

A. Well I don't know as I ever got any "circumstances" as you call it.

Q. Do you remember the circumstances?

A. Yes, I remember the time.

Q. Do you remember calling on Mr. Davis of the Davis-Olsson Company with Mr. Simmon and making inquiries about Captain Nelson?

A. I was with Mr. Simmon and possibly we called on Davis-Olsson. I don't remember the incident.

Q. Do you remember that you were inquiring about whether or not Captain Nelson had been getting a rakeoff personally for the purchases that were made on account of the Seminole?

A. Mr. Simmon may have been inquiring—

Q. Do you remember that you participated in that?

A. Not in the argument.

Q. Were you present at that time?

A. I don't recall that particular occasion that he asked about anything of that sort, but I do know that I went around with Mr. Simmon at his request.

Q. To several places?

A. Yes.

Q. Do you remember that at Davis-Olsson's you got or saw a check which that company had paid to Captain Nelson which was 10% of the amount that he had authorized spending there?

A. I can't recall the check.

Q. Will you look at these two pieces of paper and tell me if they refresh your recollection?

A. No, but they seem to be Davis-Olsson's checks.

Q. Do you remember whether you ever saw these two pieces of paper or two like them, or the original check?

A. I can't say that I remember definitely seeing those.

Q. Do you remember Mr. Simmon getting that check from Davis-Olsson when you were with him?

A. I don't think I can remember that.

Mr. Underwood:

May we have this marked for identification.

(Face of check marked Respondents' Exhibit J-1 and reverse side of said check marked Respondents' Exhibit J-2, both for Identification.)

Q. Do you remember talking with a boilermaker foreman at Merrill-Stevens on the same subject, inquiring about any rakeoff that Captain Nelson may have been getting?

A. Boilermaker?

Q. Or any person in similar capacity at Merrill-Stevens?

A. No. I have a faint recollection of something in connection with that when I was with Mr. Simmon at that time; I think I remember something about that, about asking questions of somebody, but I don't remember what was the occasion even now.

Q. Do you remember that you were participating at least to some extent in an investigation of Captain Nelson to see whether or not he was getting a rakeoff on work that was being done for the Seminole?

A. Well I imagine that I had an idea that there was something of that sort going on.

Q. Do you remember that you found out or knew that Captain Nelson twice at least during the season of 1927-1928 receipted for 200 gallons of gasoline more than the boat received?

A. Well, sir, I couldn't answer that at any particular time but I understood that that was done at times.

Q. You know about that?

A. At no particular time; I couldn't say.

Q. But you knew about that?

A. Oh, yes.

Q. The answer was "yes"?

A. Yes, sir.

Q. When you were paid off do you remember having a conversation with Paul Scott about the reason for your being discharged?

A. No, sir.

Q. You don't remember any conversation?

A. Can I answer that in my own way?

Q. Yes. I am asking you do you remember any conversation—

A. I went to the Biscayne Boulevard office after I was relieved at Fort Lauderdale; I came back with Mr. Simon—

Q. And you asked the reason why?

A. Yes, and I was given no answer; I asked to talk with Mr. Scott and he didn't have time to talk with me.

Q. Do you deny that you talked with him?

A. I don't deny it, but I never got any satisfaction about it one way or the other as to why I was laid off the boat, and when I asked for an explanation he refused to see me.

Q. That is your recollection, is it?

A. Yes, sir.

Q. Isn't it a fact that you saw Scott in his office at the Biscayne Boulevard Company and he told you that you too were under suspicion for that practice?

A. No, sir.

Q. You don't deny that?

A. I don't remember anything about that conversation.

Q. Do you remember that on that occasion you offered to furnish Mr. Scott with evidence or information regarding Captain Nelson if Mr. Scott would promise to reinstate you on the Seminole?

A. No.

Q. Do you remember that you left, having received no promise from Mr. Scott, and returned a few days later and told Mr. Scott that you were willing nevertheless, without any promise, to tell him all you knew about Nelson?

A. No, sir, I don't remember that.

Q. I want to fix the time, Mr. Brown, with you, if I can, of those conversations, those that I have just been

referring to between you and Mr. Scott: Do you recall that those conversations occurred between the 1st and the 23rd of May, 1928?

A. No. Is that correct? That is in regard to the time I left the ship, in regard to any conversation—what I mean is that it is my recollection that I left the ship in 1927.

Q. These conversations about which I am asking you occurred between the first and the 23rd of May, 1928.

A. I don't even remember the conversations, and as far as dates is concerned I don't see how I could have been there then.

Q. Do you deny that these conversations about which I have called your attention took place?

A. I don't remember the conversations to which you refer.

Q. You deny that they occurred?

A. No, I don't deny it, and I don't know how to word it; I don't remember them, and as I answered you before, sir, I told you that I requested an audience with Mr. Scott and he told me that he didn't want to see me; this was after I left the ship.

Q. Do you deny the conversations that I have spoken about occurred?

A. I don't remember them.

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Botts:

Q. In reference to the practice of taking gasoline out of the engineroom of the Seminole by drawing it from the spigot in there and handing it out through cans, you stated that on occasions when that was being done Mr.

Phipps was standing by and observing such operation, is that correct?

A. Absolutely correct.

Q. I know that you cannot be exact and remember exact dates but do you remember whether that occurred on more than one occasion when Mr. Phipps was an observer of the method you described of securing the gasoline?

A. I should say it occurred on a number of occasions in the course of the five years.

Q. Now with reference to obtaining gasoline by the use of a hose and a bilge pump, I will ask you whether or not when the practice of transferring gasoline by that method was started,—whether or not the bilge pump method was used exclusively or whether or not you sometimes used the bilge pump and sometimes you used pans and containers?

A. They were only used on the larger boats, such as guide boats; the smaller boats would generally take it through the window in a can.

Q. How would the connection be made so that this bilge pump could be converted into a gasoline pumping device; how would it be cut off from its function as a bilge pump?

A. The way I remember that connection was this: it was a "T" with two valves, one line running to the bilge manifold and the other one to the bottom of the gas tank. By cutting off the valve to the bilge manifold and opening the gasoline valve you could pump gasoline with the same pump.

Q. Now would the gasoline be sucked up by one pipe to the pump and then down through the hose to the boat?

A. Yes.

Q. Then necessarily the chambers of this pump would be filled with gasoline and discharged in that method, would they?

A. Yes.

Q. When this pumping operation was discontinued and the hose taken off, would it occur that there would be a certain amount of gasoline left in the chambers of the mechanism of the pump which would perhaps drain into the bilge?

A. With the bilge connection shut off there would be no danger of it draining back into the bilges, however, if the connections were open it would.

Q. Wasn't there an appreciable amount of piping between the pipe and the place where the connection was?

A. Maybe three or four inches or six inches.

Q. Would that portion of the piping be left full of gasoline?

A. Yes.

Q. And that could hardly drain back into the gasoline system, could it?

A. As I remember it, sir, I wouldn't say that it would all drain back into the system; it could not drain back into the system if you had enough gas in the tank, because you would have a head pressure on the bottom.

Q. You have stated in substance, as I recall it, that you objected to that method of transferring gasoline?

A. I did.

Q. Why?

A. It just simply didn't appeal to me and I didn't like it. It was one of the Captain's ideas and he insisted on doing it that way.

Q. To get at the point I have in mind: was there any danger attendant on that method of transferring gasoline; was it dangerous; was it more or less dangerous than the method of transferring it by spigot?

A. I never got that straightened out. My first feeling was that that high speed pump wasn't the proper thing to handle gasoline with.

Q. Would the high speed pump have a tendency to diffuse gasoline into the engineroom?

A. As far as the pump itself was concerned there was no leaks; I don't imagine there would be any more fumes one way or the other.

Q. Now this electric switchboard that has been mentioned; I think you referred to it as being located, I believe, on the after bulkhead of the engineroom; is that the correct location?

A. It wasn't exactly on the bulkhead; there was a space on it so that you squeeze in there.

Q. It was towards the after bulkhead?

A. Yes.

Q. Can you explain the construction of that switchboard in this respect: was there more than one switch located on that switchboard, for instance, a master switch and smaller switches, or how was it?

A. Well, there was a number of switches on it.

Q. And all of those switches were known as knife switches?

A. Yes, sir.

Q. The master switch would kill all of the connections?

A. Yes, there was one switch that would kill everything.

Q. Now with reference to this wiring system that you have described I understood you to say that the wires carrying the electric current for the light and perhaps for other devices were carried through the woodwork and along under moldings without any conduit or other protections save the insulation of the wire?

A. That is true in the cabins.

Q. Now down in the engineroom, as I understand it, the wires were enclosed, at least originally, in iron conduits, is that right?

A. Ordinary iron conduits with outlet boxes.

Q. Now this light which you have identified as being, as I understand it, underneath the general location of the

gasoline tanks, were the wires leading to that within the conduits or were they open wires?

A. When I was on board they were in conduit.

Q. And there were ordinary iron conduits?

A. Yes.

Q. And as I understand, Mr. Brown, in the course of time had become considerably rusted?

A. Several of them had.

Q. From your observation aboard boats does the insulation around wire deteriorate with time so that it is rendered liable to crack or break off and become defective so that the wires are exposed?

Mr. Underwood:

I object to that; it is a hypothetical question without the facts being given, particularly the type of insulation has not been mentioned.

The Court:

That calls for an expert opinion?

Mr. Botts:

It occurs to me, if your Honor please, that this man is qualified as an expert, at least to an appreciable extent; in other words, he is more of an expert than I would be; in other words, a person who has over a course of years worked around mechanical instruments is in a position to express an opinion. Now it may not be as valuable as that of a man who has perhaps graduated as an electrical engineer, but it seems to me that it goes perhaps to the quality rather than to the admissibility of the evidence; I mean as to its probative force rather than to its admissibility.

The Court:

Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

The Court:

He may answer the question. I will reserve ruling on that.

A. I think the only way to answer that is that the wires would show deterioration depending a great deal upon the location of them, as to their location, whether in a boat, a house or anything of the sort; also about the weather, salt water, fumes and a number of things would have to be taken into consideration, the type of acid or flux that they use in soldering joints and such things.

Q. Do you know where the batteries which supply electric current for the lights was located in the Seminole?

A. Yes.

Q. Where were they?

A. Next to the forward bulkhead of the engineroom on the starboard side.

Q. Within the engineroom?

A. In the engineroom, yes.

Q. Now from these batteries to this switchboard was about how far?

A. The length of the engineroom.

Q. Approximately how far in feet would that be?

A. Well, as the wires ran I suppose it would be about 20 feet.

Q. Now were these wires in metal conduits or were they open wires?

A. They were in conduits.

The Court:

Has it been testified what kind of batteries they were?

Mr. Botts:

No, I don't think so.

(By Mr. Botts):

Q. Can you tell us, Mr. Brown, how many and how large these batteries were and the type and voltage and so forth of current produced?

A. They were the Edison type battery, but I don't remember just how many cells we had now. We had enough cells to produce in two banks 110 volts, 110 volts in each bank; in other words, the voltage on each bank would be 110 volts.

Q. So that the current through the wiring system, irrespective of which bank the batteries were used on, would be 110 volts?

A. 110 volts.

Q. How were the switches arranged so you could throw it from one bank to the other?

A. As I remember it, it was a standard Edison connection on the board which would permit you to charge one bank while discharging the other. It was a double-throw switch of some kind. I do not recall the exact wiring of that board, although I did draw a diagram of that board in order to be familiar with it.

Q. Would it be possible to throw these switches so that the current from both banks of batteries would be in the wiring system at one time?

A. I was anticipating that, and I was trying to remember about it. It seems to me that it wasn't possible, that you would have to use one or the other side, however it is very possible. I am not sure, but as I remember the connection, you could operate the banks in multiple—I don't know whether they had that device or not, but I have seen them where you could operate two banks in multiple, you could be charging one and discharging the other. I don't know whether that one was wired that way or not.

Q. As a matter of fact if both batteries were thrown together, assuming that is possible for the purpose of this question, that would make 220 volts of current in the wiring system.

A. You mean both banks?

Q. Yes.

A. No; just simply 110 volts.

Q. Then it would merely increase the amperage of the voltage and not multiply the voltage of the current?

A. It wouldn't increase the voltage appreciably; it would not double the voltage.

Q. Now on this occasion, the day that you have been unable to fix, on the dock at Palm Beach, when you stated that you discussed with Mr. Phipps and Captain Nelson the advisability of rewiring the ship,—I wonder if you gave to Mr. Phipps and Captain Nelson, or the two of them there, any explanation as to why that rewiring was advisable; did you tell them why you believed it should be done?

A. Naturally in the course of the conversation—in the course of a conversation of that kind I would have even argued the point, and I distinctly remember the conversation as coming up and I held up for my point, that the ship should be rewired.

Mr. Underwood:

I move to strike that answer. It is not the witness' recollection of what happened; it is a supposition as to what he would do under such conditions.

The Court:

Read the question and the answer.

(Preceding question and answer read by the Reporter as above recorded.)

The Court:

The motion is granted. Now read him the question again.

(Preceding question read by the Reporter as above recorded.)

(By Mr. Botts):

Q. Can you answer that question one way or the other; did you or did you not to the best of your recollection?

A. Yes, I did.

Q. Now are you sufficiently familiar with the general location of the various wires to tell me whether or not any of the wires connected with the electric system ran underneath the engineroom floor and down in through what is ordinarily called the bilges of the boat, under that section there.

A. I don't remember any wires that ran under the engineroom floor. They run on a level with the floor plates and went forward, going aft up near the floors of the after compartment, in other words, under the stringers, about thirty inches above the frame of the vessel.

Q. Now the engineroom floor, as I understand it, was on the same general level as the floors of the staterooms that were on that deck of the ship, is that correct?

A. No; it was lower.

Q. It was lower?

A. Yes.

Q. Then these wires, if I understand you correctly, ran underneath the floor of the cabins and would have been above the level of the engineroom floor?

A. Yes, sir.

Q. Now the space that they ran through under there was open down to the bilges of the boat; there was no woodwork or anything else to separate the location of this wiring from the open space that went down to the bilges

of the boat, was there; do you understand what I am saying?

A. I don't say—there was nothing else except forward; we had some boards laid on the frames to crawl on in some places, but there was no flooring over the frames of the vessel; there was no plates over it; the floor was all gone; you could see right through the frames, and in a majority of cases aft there was nothing to walk on except the plates and the frames.

Q. Up above that—

A. The conduits were fastened under the floor.

Q. How many carburetors were provided for those motors?

A. One on each main engine and one on each auxiliary.

Q. Was there a drip-pan underneath the carburetors?

A. Yes, sir.

Q. Were there backfire arrestors provided for the carburetors?

A. No.

Q. Now you stated that on occasions, with reference to conditions particularly in the engineroom affecting your duties, that you went over the head of the Captain and went directly to Mr. Phipps.

A. Correct.

Q. Can you give us an illustration of some particular thing at that time concerning which you went directly to Mr. Phipps?

A. I can't say that I could give you the exact dates of the exact conversations or anything of that sort, but it was just in the course of regular events, during the cruise, during the layover at Palm Beach, at which times Mr. Phipps and I had a number of conversations regarding such things. It wasn't because I wanted to go over the Captain's head; it was a matter of suggesting things that I thought were worth while, worth suggesting.

Q. Do you recall at this moment any illustration of one or more things that were discussed in that way, not

so much as an effort to go over the head of the engineer, but do you remember an illustration of one or more such things as you stated to Mr. Phipps suggestions about the various things of importance in your department?

A. I don't think I can remember any particular instance where—I would be afraid to answer it that way. I would say I don't remember.

Q. Did I understand from what you have said that on the type of carburetors that was used at that time that if the engine was cut off and the gasoline supply was not cut off, that the carburetor would leak and drip?

A. That was true that the carburetor would drip and leak. Now that may be explained in this way: all of those Wintons had long intake manifolds, and a great deal of that drip may have been condensation of gasoline in the manifolds which would run back. It was a common occurrence that every time these engines were shut down the gasoline would pour out of the carburetors for some time, and it was absolutely necessary to mop it out of these pans.

Q. You used the expression "poured out". By that expression do we understand you mean it poured out by the gallons or by teaspoonfuls?

A. I should have said I have seen at least a quart or a half pint come out of the manifold when the engines shut down.

Q. Now this fuel supply pipe in the tanks that you said would sometimes overflow because of the small size of the overflow pipes from the tanks. When that pipe would overflow just where would the gasoline go to?

A. Practically everywhere; it would start up on deck and go from there wherever it could.

Q. Would it run down the outside the supply pipe and—

The Court:

I think you are exceeding a little bit too much in leading there.

Mr. Botts:

Very well.

(By Mr. Botts):

Q. Would you indicate where that gasoline might go to?

A. In the case of a runover due to the tanks being full and the overflow not taking care of it, most of the gasoline poured out on deck; it would pour out on the deck and down the scupper and overboard; and some of it would seep down through—that pipe wasn't solid in the deck; it was a gas pipe joint where it went through the deck.

Q. Where did it go from there?

A. Into the engineroom.

Q. Would it go down into the bilges, in other words?

A. Depending on the quantity that came down; it would depend on the quantity as to whether or not it would go down into the bilges; if enough came out it would go down into the engineroom, seep or drip down.

Re-Direct Examination.

By Mr. Matteson:

Q. Who followed Captain Nelson as Captain of the Seminole, do you recall?

A. Willie Baker.

Q. Were you serving on the Seminole at the same time when William Baker was Captain?

A. For possibly two or three weeks.

Q. You were asked about your service on other vessels of houseboat types. Will you tell us what your service has been on other gasoline vessels and what the types of those vessels were. I am not asking you to give the name of every one of them, but give us the years and type and size of the vessels.

A. My first gasoline experience was on the Alabama River in 1905 or 1906, possibly 1905. There was several small gasoline boats on the river and I built one of them

myself and ran it there on the river at different times. A few years later I carried passengers on one of the gasoline boats I had on the river. I built a stern wheel gasoline boat on the Alabama River and ran her on the Alabama River, and also the Coosa and the Talapoosa and also on the Tom Bibgee River, the same boat. There was another gasoline stern wheel boat at Montgomery and I went out on her several trips as consulting engineer; it was all a novelty in those days and we were all interested.

Q. After that what sort of experience have you had on gasoline vessels?

A. Well, I built one in Albany, Georgia, an excursion boat, and ran it up there for quite a while. I have had experience on the Ohio River in gasoline craft and I have run boats around this town since 1921 off and on, except for the past five years. I never done much boating in the past five years, as I have been too busy doing other things.

Q. Have you ever had any experience in pleasure gasoline vessels other than houseboats vessels that Mr. Underwood asked you about?

A. Yes.

Q. What has that amounted to?

A. For years it took all of my spare time; I devoted quite a bit of time to pleasure gasoline boats, going out on boats, taking parties out, or going out with fishing parties.

Q. Have you served as engineer on gasoline yachts of other than houseboat type?

A. Yes.

Q. What sort of vessels and what vessels?

A. Well, the Old Nick; that was about 1923 or 1924. I was working in Tracey's Boatyard and they wanted a man to run the Old Nick, and I helped to run her and I installed the engines and took her out to sea.

Q. What kind of vessel was that?

A. Well, it was built for the Russian Government as a submarine which was converted into a fishing boat; it was equipped with 300 horsepower engines and was about 60 feet long.

Q. Are there any other vessels of that type, of the yacht type, that you recall at the moment?

A. Not the yacht type, but big boats such as that.

Q. I want to ask you a question about these conduits that you have been describing to use that the electric light lines run in. Can you tell us whether these were solid conduits or whether they had openings in them?

A. You mean by openings—

Q. I mean other than the ends.

A. Only the rust holes, that I remember.

Q. Have you seen electric conduit pipes with spaced holes?

A. Those known as "vented" conduits?

Q. Yes.

A. I am familiar with them. I don't say that I have been on ships that had them, but I have seen them and I have read of them.

Q. What is the purpose of putting these vents in them, as you call them?

Mr. Underwood:

I object to that—

Mr. Matteson:

I will withdraw it. It doesn't make any difference now. I will cover that in another way.

Q. You spoke of the effect of the vibration of a vessel on a carburetor, I believe. Will you tell us whether or not that vibration would have any effect on pipe fitting connections?

A. Yes, sir.

Q. What would that effect be?

A. Any vibration on a screwed pipe connection joint I should say loosens the threads by movement of the pipe in the fitting.

Q. Your attention was called to Libelants' Exhibit No. 5, and I think you said that that picture shows what might have been the bottom of one of the tanks of the Seminole and the valve attached to it, and I think that you said that the appearance was changed. Now was its appearance changed, how was this different in appearance as it was on the vessel at that time?

A. I do not see any pan under that tank; but besides that, the general appearance of the metal of course shows a burn, or discoloration; that was the general idea.

Q. You can see that this has been burned?

A. Yes, sir.

Q. Is there anything in that picture that shows the pan at all; is there anything in this exhibit, Libelant's exhibit 5, to show a pan at all?

A. What's that (pointing)?

Q. That isn't it.

A. I can't see anything else that looks like it.

Q. Let me ask you this question: if there had been a hot fire there and this pan was made of lead,—what would a hot fire do to a lead pan; can you tell us?

A. That is the only way I know of melting lead, to apply hot fire to it.

Q. Among metals is it known that lead has a lower melting temperature—

A. Lower than a great many metals, yes.

Mr. Matteson:

That is all.

Re-Cross Examination.

By Mr. Underwood: (

Q. This wiring that was in the cabins, in the lighting system, was regular lighting wire, I take it?

A. Most of it.

Q. Covered by insulation?

A. Yes, sir.

Q. And then it was under a wooden molding?

A. Some of it was under a wooden molding, and some of it just pulled through a hole, a hole through wooden partitions, just pulled through.

Q. That which was under the molding, what type of molding was it?

A. Well, I imagine there was several different types; I remember that some of it run in coronal molding, with the corners cut off,—it was run through under the molding; for instance, in the center of the room there would be a column frame something like this (pointing to wall of Courtroom); it would be a two-wire molding especially made for wiring.

Q. With a slot cut for the wire to fit in?

A. Yes, in some instances it had single slots and in some cases two-slot wires.

Q. Of course all of that molding was painted, wasn't it?

A. Yes, very heavy.

Q. Now, all insulation deteriorates with time, doesn't it?

A. Yes, that seems to be the case.

Q. The rubber-type insulation eventually gets hard and cracks, so to speak?

A. Yes.

Q. You can't tell when that is going to happen, can you?

A. Not definitely; no, sir.

Q. It depends on the kind of service it has seen and the conditions under which it has been existing, is that right?

A. That has been my general belief; I imagine that is right.

The Court:

I don't quite understand, Mr. Brown, about the insulation of the wiring that was under the molding; what was the insulation there?

The Witness:

Just ordinary insulated wire; in a majority of cases it was rubber covered.

The Court:

How was the molding attached to it?

A. The wire was laid right in the molding just like this:

(Witness leaves stand and goes to wall of Courtroom and makes illustration.)

The Court:

Would the rubber insulation be right up against the wood?

The Witness:

Absolutely.

(By Mr. Underwood):

Q. I take it that you have seen that type of construction many times?

A. I saw that in railroad work long years ago; they have since come to the conduits in a majority of cases; that was in 1900, I believe.

Q. You spoke about the overflow from this filler pipe on the deck. Did you ever fix that pipe?

A. No, sir.

Q. Did you think it ought to be fixed?

A. I even suggested to the Captain that it ought to be fixed, and he told me he had it in there just like he wanted it.

Q. You haven't answered my question; you say that when you saw the overflow seep down in between the pipe and the boards—

A. Yes.

Q. Did you ever fix that opening or joint?

A. That was—

Q. Did you ever do it?

A. No, sir.

Q. Didn't you think it ought to have been done?

A. Yes, it should have been done.

Q. Now in your experience on these boats that you have spoken about to Mr. Matteson just now,—those were small boats on the Alabama River?

A. Gasoline boats, about 50 or 60 feet on an average. Some of them were small boats; they ran from 16 feet to 60 feet.

Q. What were they used for?

A. Pleasure and stern wheel boats for towing barges.

Q. Nothing in the nature of a houseboat or fishing boat up there?

A. No, sir, not in the sense as we know them down here.

Q. Open cockpit boats?

A. In a majority of cases; some of them were cabin boats; there were several on the river.

Q. You have mentioned one gasoline yacht other than the Seminole this afternoon, the Nick, and that is the only one. Was there any others?

A. Well, there is a difference between yachts and fishing boats. I have been on different boats at different

times, not as a regular job, but a day or two at a time; just for a day or two or something of that sort.

Q. The Seminole when she went out on these cruises was sort of a mother boat for many of these fishing boats?

A. Yes.

Q. Have you ever been out on any other boat that served that purpose?

A. In what respect?

Q. That acted as a mother-ship, so to speak, of fishing boats on fishing expeditions?

A. Yes.

Q. Which one?

A. The Old Boomerang.

Q. Any others?

A. No the rest of them didn't carry a boat on deck, no more than just row boats or something like that.

Q. You spoke about the carburetor leaking if you shut off your engine by closing the spark without shutting off your gas; did you shut it off that way ordinarily?

A. Which way?

Q. By shutting off the spark?

A. Never, but I found out—

Q. How did you do it; did you turn off the gas?

A. Yes.

Q. Was there any leaking after that?

A. Very little leaking after that.

Q. Was there any leaking at the carburetor after that?

A. I think that is a sort of misleading question and I am objecting to it in that way, the way you ask it. There could have been very little, and you wouldn't call it any leak; there would be a little leak, because you always get condensation after you get through using the engines, and I figured by shutting it off at the switch it would be much safer, and—

Q. Is that the reason you stopped the motors?

A. The main reason—

Q. Is that your way?

A. That was my way, yes.

Q. You said something about vibration having effect on pipe connections. Let me ask you about that: brass pipes having threads on both ends and fitting into a fitting on each end, you can have vibration. Did you say that the effect of vibration is to loosen up the connection?

A. I believe that to be the case.

Q. Which way does it turn in the pipe?

A. I wouldn't say that it turned it any way; in general it would be first one way and then the other. If you could examine it close enough to notice the movement, you could see the vibration of the pipe working, which would tend to make it looser. That is about the only way I could explain it.

Q. Does it make any difference whether the pipes are installed with a strain on them or without a strain?

A. I imagine that depends on the installation quite a bit.

Q. Isn't it a fact that it all depends on the amount of vibration and the manner in which the installation was made and the manner in which the pipes are supported?

A. As I said, we tried to get them without any strain; if a pipe is properly supported there isn't much strain on it.

Q. Vibration doesn't always loosen pipes, does it?

A. No.

Q. It depends on conditions, doesn't it?

A. I imagine that is true.

Q. Isn't it true?

A. Let me get that straight.

Q. Isn't it true further that vibration of a boat will loosen pipes, depending on conditions?

A. Yes. I would like to straighten myself out on that.

Q. Go ahead.

A. Vibration in a boat and vibration in a pipe line may be two different things.

Q. Because the boat vibrates doesn't necessarily mean that the pipe will?

A. That is right.

Q. If a pipe vibrates what the effect of it will be depends on conditions?

A. Yes, sir.

Q. And the amount of vibration?

A. Yes.

Q. And how well the installation was done?

A. That is true.

Q. And various other things?

A. Yes.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. The converse of what Mr. Underwood just asked you: I think you said that a boat vibrates and it doesn't necessarily mean that the pipes vibrate. If the boat doesn't vibrate, does it necessarily mean the pipe doesn't vibrate?

A. I think he sort of brought that question out in such a way—he brought that out when I was thinking of something else. I don't think you need to put this into the record, but it is all right with me. If I answered his question yes or no, or one way or the other, as he tried to bring it out, it would mean that I would condemn every locomotive in the United States. A locomotive has hundreds of pipe lines, and if movement would be injurious or cause vibration to pipe lines, I can think of nothing that would do it more than a locomotive engine, unless they were properly installed, and for that reason I answered him that way.

Q. Are you a member of any society of engineers?

A. Yes, sir.

Q. What society is that?

A. Association of Power Engineers.

Q. What sort of an organization is that?

A. Educational.

Q. Are you down here under subpoena today?

A. Yes, sir.

Q. Do you hold any certificate or anything of that kind from this organization that you spoke of.

A. I should have a card with me, and I have this button here (pointing to button in lapel.)

Mr. Matteson:

That is all.

Mr. Underwood:

That is all.

(Witness excused.)

766 Thereupon: MRS. GEORGE J. PILKINGTON was produced as a witness by the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Mrs. Pilkington, you are the wife of George J. Pilkington?

A. I am.

Q. Do you live at the location where the Pilkington Shipyard is located?

A. I do.

Q. Do you have something to do in connection with affairs of that yard?

A. I do.

Q. What is that?

A. I do the bookwork; of course I am not a bookkeeper but I do the best I can.

Q. Do you send out the bills?

A. I do.

Q. How do you know to whom to send them?

A. Whatever my husband tells me; he tells me to send them out and who to send them to.

Q. He makes the arrangements?

A. Yes, he makes the arrangements; he made the arrangements in previous years, but the last few years I make the arrangements, because the Captain is not in very good health.

Q. Of course, Mrs. Pilkington, you remember the fire of 1935?

A. I certainly do, because we lost everything we had.

Q. You had been telling me about the system that you have there; did that apply before 1935?

A. Which system?

Q. The system by which you kept the books and he made the arrangements.

A. I don't quite catch you.

Q. You told us that Captain Pilkington made the arrangements with the boat owners and that you kept the books, and he told you what the arrangements were?

A. Yes.

Q. Was that system in effect before 1935?

A. Yes.

Q. And for how many years had it been in the business there?

A. I went up there in 1922, in October, 1922, and the fire was the 24th day of June, 1935.

Q. Now, Mrs. Pilkington, have you at the request of Mr. Botts and myself brought with you the books that you have kept?

A. I have.

Q. Are these the books here?

A. Yes; they are the books.

Q. This book that I pick up first has 1928 on the cover.

A. Yes.

Q. That begins in 1928, does it?

A. Yes, 1928.

Q. In this book I see that you have at the top of different pages the names of individuals.

A. I have.

Q. And after that is the heading of each account—

A. Just like this party here; it is Stark; just like this, Chamberlain and Shaver—

Q. At the head of each page, as I understand it, you have the name of the individual and after that the names of the boats in which he is interested?

A. Yes, I do.

Q. Under these circumstances I take it that you would send the bill for those boats to the individual named, is that right?

A. Yes, on the top of the page, or whatever the Captain gave me.

Q. In this book for 1928 can you find a page that relates to the Seminole?

A. 1928; A. A. Simmon, 1317 Biscayne Building, Miami, Phone 3-1311.

Q. Is that "Biscayne Building" or "Biscayne Boulevard"?

A. Biscayne Building is what I have on the page. You see, the Captain don't hear very well, so perhaps he made a mistake in "Biscayne Boulevard" and told me "Building".

Q. Under the name of A. A. Simmon here I see that storage is listed with respect to various boats, is that right?

A. Yes.

Q. I see.

A. Houseboat Seminole, and then the small boat "Junior"—

Q. What was the small boat "Junior"?

A. That is just like a fishing boat; it is just what they gave me, "small boat, Junior." I don't know what it was like. I guess it must have been a thirty-footer, because you see we charge one cent a day a foot; and thirty-one days would be \$9.30; that was in August.

Q. On this page you have some other boats named.

A. Yes, there are six or seven on that page. The "Olanthe"; I don't know how you would pronounce it.

Mr. Matteson:

I think we can agree that it is the "Iolanthe".

Mr. Underwood:

I don't know whether it is or not.

The Witness:

Iolanthe; I-o-l-a-n-t-h-e.

(By Mr. Matteson):

Q. That is what you are speaking of?

A. Yes. And the other one, "Sonia"—

Mr. Underwood:

Are you going to offer the book?

The Witness:

I will try to speak a little louder, if I can. I have been having throat trouble, so you will have to excuse me.

Mr. Underwood:

That is quite all right; I can hear you very well.

A. This one (pointing) is the Mino; and the White Car, and then there is another one, the K-21215.

Q. And all of those boats are listed under the name of

A. A. Simmon?

A. Yes.

Q. Then do I understand that the bills representing these charges for storage as listed here were sent to A.

A. Simmon?

A. Yes.

Q. You did that?

A. Yes.

Mr. Matteson:

I would like to offer this book in evidence.

Mr. Underwood:

I object to it as not proof of any fact in issue in this case, self-serving declaration and not binding on the Respondent Phipps.

Mr. Matteson:

We are showing the system by which these bills were dealt with, beginning with 1928 and right down to the time of the fire. It makes a connected story and I think it should be before the Court.

Mr. Underwood:

I do not object to the story getting before the Court. In fact, before the case is over, I am going to insist that the story get before the Court, but I think it should get before the Court according to the rules of evidence; that is what they are for. There is nothing that occurred on this book at the time these entries were made would in any way be connected with the Respondent I represent.

The Court:

It will be admitted subject to its being properly connected up. I think it has relevancy. Do you offer the whole book or just that page. If the record goes up on appeal you would certainly make it much more simple by offering only certain pages. To photostat that whole book would be rather expensive.

Mr. Matteson:

That is what I had in mind, your Honor. I refer to page 57 and to the index page under "S". I offer these in evidence, and I think Mr. Underwood will agree that photostatic copies can be substituted in place of the original, provided the original book remains open for inspection. Is that all right?

Mr. Underwood:

Certainly.

Q. Is this the only page in this particular book that refers to the Yacht Seminole?

A. Yes, sir.

Q. And the boats under Mr. Simmon's account?

A. Yes.

Mr. Matteson:

We will agree that the name "A. A. Simmon" appears on the index page, so that will eliminate that page. It will be page 57.

(Thereupon book identified by the witness was marked Libelants Exhibit 82, with the understanding that page 57 and index page "S" constitutes the exhibit.)

The Court:

What book is that?

The Witness:

That was the first year.

The Court:

I know, but what is it?

The Witness:

That is where the boats come in and we charged the boats up.

The Court:

Do you call it a ledger?

The Witness:

Yes, I would call it a ledger.

(By Mr. Matteson):

Q. I show you the next book, which has the figures 1929 written on the cover. Can you show me the page where the entries with respect to the Seminole are?

A. It is page 19. A. A. Simmon. Then Mr. Riley. The Captain told me to send it to Mr. Riley. It says Mr. Riley—Palm Beach Company.

Q. I see Mr. Huff's name there.

A. Mr. Van E. Huff also. Also was sent to Biscayne Boulevard—it was always to Mr. A. A. Simmon. All listed under Mr. A. A. Simmon.

Q. The bill was addressed to A. A. Simmon, do I understand?

A. Yes. We addressed the bill to A. A. Simmon at 1317 Biscayne Boulevard. I think that is correct, because evidently the Captain must have told me "Boulevard".

Q. What is the meaning of Mr. Huff's name there?

A. I really can't say about that.

Mr. Underwood:

May it be understood that my objection heretofore stated runs to this entire line, so I won't have to be popping up.

The Court:

All right; let the record show that the same objection as made to Exhibit 82 is made to all of the other books and records introduced through this witness.

Mr. Underwood:

And as to Mrs. Pilkington's testimony respecting their contents.

The Court:

All right.

(By Mr. Matteson):

Q. Mrs. Pilkington, start over again.

A. This is my first offense; I don't know how to go about it.

Q. This is the first time you have ever appeared as a witness?

A. The first time in my life.

Q. Here is Mr. A. A. Simmon's name at the top of the page.

A. Yes; and the Captain told me to send it to Mr. Riley at Palm Beach Company; pardon me; it is "Van E. Huff, the Plaza, Palm Beach, Florida"; that is all on here; see?

Q. Then was there part of the time that you sent the bills to Mr. Huff?

A. I really couldn't say.

Q. Was there part of the time that you sent the bills to Mr. Riley?

A. I sent most of the bills—I am sure—to Palm Beach Company.

Q. Is there anything in that book from which you can tell us about what time Mr. Riley's connection with the boats commenced?

A. When Mr. Riley's name appeared here; it must have been in 1929.

Q. Is there anything that shows about what month?

A. Yes, I think it was in April, because you see there is the same ink up there and the same ink down here, so it must have evidently been in April.

Q. That is, it appears to you that the first entries in April were written at the same time as the name of Mr. Riley?

A. I imagine so, but I won't say for sure.

Q. On this page we have entries with respect to the Seminole, the Iolanthe and K-21215, Small Fishing Boats, is that right?

A. That is right.

Q. Is that the only page in the book that has any entries with respect to the Seminole or any other boats of Mr. Phipps' or any member of the Phipps family?

Mr. Underwood:

I object to the latter part of the question with respect to "any other members of the Phipps family".

Mr. Matteson:

Or in which any member of the Phipps family was interested?

Mr. Underwood:

Or the Seminole Boat Company?

Mr. Matteson:

I offer page 19 in evidence under the same arrangement.

Mr. Underwood:
The same objection.

(Page 19 of Ledger book above referred to was marked Libelants' Exhibit 83.)

Mr. Matteson:
The index referring to this page 19 is under the name of Van E. Huff, and also under the name of A. A. Simon.

Mr. Underwood:
But not under the name of Riley.

(By Mr. Matteson):

Q. Mrs. Pilkington, I think we probably made a mistake the last time, because I find page 43 here.

A. Yes.

Q. What is the name of the heading of that page?

A. Mr. Riley, Palm Beach Company, Palm Beach, Florida.

Q. On that page there appears to be entries relating to the K-21215 and the Iolanthe, is that right?

A. Yes; that is page 43.

Q. And that page is indexed under the name of Mr. Riley?

A. That is right; I don't remember crossing that out, (pointing).

Mr. Matteson:

I offer this second page, page 43 of this same book, also.

The Court:

Admitted under the same ruling, and subject to the same objection.

(Page 43 of the book above referred to was also marked Libelants' Exhibit 83, making pages 19 and 43. of said book, Libelants' Exhibit 83.)

Q. Now this next book is —

A. 1930-31-32.

Q. And here on page 53 you have what?

A. On page 53: A. A. Simmon, Biscayne Boulevard, Biscayne Drive, Miami, Florida.

Q. Is there a notation on there as to where to send the bill?

A. Send bill to Palm Beach Company, Palm Beach, Florida.

Q. Under that I take it, Mrs. Pilkington, that you have a full page of entries?

A. A full page, yes, but I was sick at this time and the Captain figured it out here (pointing).

Q. And the entries at the bottom of page 53 were made by the Captain?

A. Yes, and the bills were sent into the company, but I just don't remember which company.

Q. Is this page 53 carried over on the lower part of page 52?

A. Yes, because I have marked here (indicating) 52, 51 and 52.

Q. Under this heading you have entries relating to the K-21215, the Iolanthe, the Seminole, fishing boats, 18 feet — they are the boats?

A. They are all of the boats, yes.

Q. They were all under the name of A. A. Simmon?

A. Yes, and you see here at the top it says: "Send bill to Palm Beach Company, Palm Beach, Florida".

Q. Is that where the bills were sent?

A. Yes.

Q. And this page is referred to in the index under the name of A. A. Simmon?

A. Yes, sir.

Q. You do not find any other reference in the index to that page?

A. No; I just sent them like this. I am ashamed of my bookwork.

Mr. Underwood:

I think it is splendid; I wish I could do as well.

Mr. Matteson:

I ask to have these pages, 52 and 53, marked in similar manner to the others.

(Pages 52 and 53 of the book above referred to were marked Libelants' Exhibit 84.)

Q. Now, Mrs. Pilkington, the next book that I have is—

A. 1932-33.

Q. I call your attention to page 10.

A. Palm Beach Company, Palm Beach, Florida, 1932.

Q. On page 10 under that heading you have entries relating to the Seminole, Iolanthe, 32-foot fishing boat, K-21215—those boats are all referred to on that page?

A. Yes.

Q. And then from the bottom of page 10 we go to the middle of page 11.

A. That is correct.

Q. And this page 52; how is that headed?

A. That is the Yacht Dorothy, Palm Beach Company, Palm Beach, Florida.

Q. That relates to the Yacht Dorothy?

A. Yes, it relates to the Yacht Dorothy.

Q. But the name "Dorothy" does not appear in the heading?

A. No; it is Palm Beach Company, Palm Beach, Florida.

Q. On the opposite page, page 53, what is the heading of that page?

A. Palm Beach Company, Palm Beach, Florida, Houseboat Seminole.

Q. And that entire page relates to the Seminole?

A. Yes, that relates to the Seminole.

Q. Now, turning the page, 54 is—

A. Palm Beach Company, Palm Beach, Florida, Yacht Iolanthe.

Q. And all of the entries on this page relate to the Iolanthe?

A. Yes.

Q. And under the heading "Palm Beach Company"?

A. That is correct.

Mr. Matteson:

I ask to have these pages, 10, 11, 52, 53 and 54 marked the same way as the others.

(Pages 10, 11, 52, 53 and 54 of the book above referred to were marked Libelants' Exhibit 85.)

Q. The next book we have is headed "1934".

A. Yes.

Q. In this book I call your attention to page 3. How is that headed?

A. Palm Beach Company, Palm Beach, Florida, Yacht Iolanthe.

Q. All of the entries on this page relate to the Iolanthe?

A. That is correct.

Q. And the bills with respect to this would be sent to whom?

A. Palm Beach Company, Palm Beach, Florida.

Q. Now we turn over to page 4 of this same book; what is the heading on that page?

A. Palm Beach Company, Palm Beach, Florida, Seminole.

Q. And the entries on that page all relate to the Seminole?

A. Yes, sir.

Q. And to whom were the bills to be sent in that case?

A. To the Palm Beach Company.

Mr. Matteson:

I would like to have these two pages marked in similar manner as the others. I offer them in evidence.

The Court:

Admitted under the same ruling and subject to the same objection.

(Pages 3 and 4 of the book above referred to were marked Libelants' Exhibit 86.)

(By Mr. Matteson):

Q. Now this next book that we have is—

A. 1935.

Q. And I call your attention to page 2 of this book; what is the heading at the top of that page?

A. Palm Beach Company, Palm Beach, Florida.

Q. Under that heading we have entries under "Houseboat". I suppose that refers to the Seminole, does it?

A. Yes, that refers to the Seminole.

Q. Those all relate to the Seminole?

A. Yes.

Q. To whom were these bills sent?

A. Palm Beach Company, because Mr. Riley always told me to send the bills to Palm Beach Company.

Mr. Underwood:

Including the ones on page 25 for five gallons of gasoline; is that right?

Mr. Matteson:

Yes.

(By Mr. Matteson):

Q. And the final entry there is on May 31, 1935, is that right?

A. Yes, but I went up to Mr. Riley, because Mr. Riley sent only \$50.00.

Q. I will ask you about that in a minute, Mrs. Pilkington; the last entry with reference to the Seminole is May 31, 1935 for \$75.00?

A. Yes, sir.

Q. Would that be the charge for storage during May?

A. It must have been, but the Captain reduced it to \$60.00.

Q. It was during the month of June that the boat was burned up?

Mr. Matteson:

I ask to have this page marked. I offer it in evidence.

The Court:

Admitted under the same ruling subject to the same objection.

(Page 2 of the book above referred to was marked Libelants' Exhibit 87.)

(By Mr. Matteson):

Q. Mrs. Pilkington, here is a file of bills that was produced by the lawyers for the other side in this case, and I would like for you to run through them and tell me if you recognize them as bills that were sent by you?

A. Yes, they were sent by me. This "CEP" is a bill receipted by me.

Q. When there is "CEP" on a bill, Mrs. Pilkington, that means it was receipted by you?

A. Yes.

Q. Most of these bills are not receipted at all.

A. Very few; sometimes we got the bills back and sometimes we didn't, but whenever any of our customers sent our bills to us we receipted them and returned them to the customers.

Q. So if there is not a receipt on these that would mean that they were never sent back to you?

A. Yes, that is correct.

Q. Now these bills were made out by you, weren't they?

A. Let me see.

Q. Just look through them and see.

A. That bill (pointing) wasn't made out by me.

Q. That is the one dated January 31, 1929.

A. Yes.

Q. You say that wasn't made out by you?

A. No; I guess my husband must have made that one out.

Q. All right.

A. And this bill must have been made out by him, because this one is not my writing at all.

Q. That would be the bill of July 31, 1930?

A. Yes.

Q. And that one you say the Captain made out?

A. He must have; the Captain must have made that one out.

Q. Now let's see about the others.

A. I can't say about that bill (pointing).

Q. That is the one dated August 31, 1930?

A. Yes; I don't remember making that out like this. I always made them out this way (indicating).

Q. You didn't make the one out on the letterhead?

A. No, sir; only on statements. I wonder why this (pointing) is crossed out.

Q. That may not have been done in your office at all; in fact, I think it was not. Was that one made out by you?

A. Yes.

Q. And that is the one dated September 30, 1930?

A. Yes.

Q. I don't know why this is crossed out. I never would have sent a bill out like this.

Q. You are referring to the bill of April 30, 1932, on which some items were crossed off, is that right?

A. Yes. Now this one is not my bill.

Q. You are referring to the one dated August 31, 1932?

A. Yes.

Q. Who made that out?

A. That one must have been made out by my husband.

Mr. Matteson:

I think that we can concede that the rest of them were made out by Mrs. Pilkington or Captain Pilkington?

Mr. Underwood:

Yes.

(By Mr. Matteson):

Q. And the only one in the list, Mrs. Pilkington, that is receipted is the one dated August 31, 1928?

A. Yes.

Q. Is that receipted by you?

A. Yes, that is receipted by me.

Q. So that would be the only one that came back to you for receipt?

A. I wouldn't be sure unless I went through all of them.

Q. If I am right in telling you that this is the only one which is receipted, then would that be right?

A. If I went through all of them I could tell you.

The Court:

Mrs. Pilkington, when he tells you that is the only one that is receipted by you, do you take it for granted that his question is correct?

The Witness:

I don't understand.

(By Mr. Matteson):

Q. If the rest of them are not receipted, then that means that they did not come back to you?

A. Some did and some didn't.

Q. I understood you to say that, but when they came back to you you receipted them and returned them to the customer?

A. Yes.

Q. These bills all came from the files of either the Palm Beach Company or someone else, so if they haven't any receipt on them that means that they never came back to you; is that right?

Mr. Matteson:

In lieu of marking these bills I will ask to have this list furnished me by Mr. Underwood marked temporarily, with the understanding between counsel that we are to bind these with the others before they are marked definitely in the evidence.

(Thereupon the list of bills above referred to were marked Libelants' Exhibit No. 88.)

Mr. Matteson:

We want to offer the file of checks in evidence, but for the time being we can mark the list of them furnished me by Mr. Underwood. We want to show that in quite a number of cases the checks covered items for boats other than

the Seminole, and we want the record to show just what boats they covered.

Mr. Underwood:

The duplicate of the original voucher check will show that, and we will tear these apart and attach them to the bill and the voucher.

Mr. Botts:

Do I understand that each check represents a payment made to Captain Pilkington on account of boats that were stored up there?

Mr. Underwood:

That is my understanding, but when I get the vouchers and attach them, the vouchers will speak for themselves.

Mr. Botts:

Each of them represents a payment made to Captain Pilkington?

Mr. Underwood:

Yes, and they are all indorsed by him.

Mr. Matteson:

With that understanding I will simply mark the list of checks, instead of offering the checks in evidence.

(List of checks above referred to was marked Libbants' Exhibit 89.)

Q. Now, Mrs. Pilkington, I want to ask you a few questions not connected with the books.

A. All right.

Q. Do you know Mr. J. F. Riley?

A. I do.

Q. How long have you known him?

A. I guess I have known Mr. Riley since about four or five years ago.

Q. Four or five years from when?

A. I couldn't say positively when Mr. Phipps brought Mr. Riley up and told Captain Pilkington to send the bills to Palm Beach Company; that is when I met Mr. Riley.

Mr. Underwood:

There is no foundation for this yet, and according to the evidence there wasn't anybody else present at that time. This lady wasn't present, and it is shown to be hearsay.

The Court:

I will sustain the objection.

(By Mr. Matteson):

Q. Just tell me when was the first time when you met Mr. Riley; you met him when?

A. I saw Mr. Riley—well, I couldn't say exactly when I met him, but I met him. I will say within the last four years anyway.

Q. Now do you mean the last four years from now or four years back from the fire?

A. Back from the fire.

Q. The fire was almost four years ago now?

A. That is right.

Q. There has been some testimony here about Mr. Riley coming there with Mr. Phipps. Did you see Mr. Riley come with Mr. Phipps the first time that he came?

A. Yes, I did.

Q. Did you hear the conversation that took place at that time?

A. No, I didn't.

Q. When was it after that that you got word to send the bills in care of Mr. Riley?

A. Whatever is in the book; what is in the book to send it to.

Q. As it appears in the book?

A. As it appears in the book.

Q. When did you see Mr. Riley again in the yard at your place?

A. When he went on the Seminole and examined it once a month.

Q. You saw him when he came on those occasions, at least some of them?

A. Yes, and sometimes he came on Sunday.

Q. How did you know who Mr. Riley was?

A. Not until that time when he came in with Mr. Phipps; after he left the Captain told me who he was.

Q. What did the Captain say as to who he was?

Mr. Underwood:

If your Honor please, I object to that; it is not binding in any way upon the Respondent Phipps, and it is hearsay.

Mr. Matteson:

It seems to me that the fact that Captain Pilkington at the time was speaking to his wife, who keeps the books—it seems to me that the instructions that he gave to her in the ordinary course of business should be in the records.

The Court:

I do not agree with you. I will sustain the objection.

(By Mr. Matteson):

Q. Did you have any conversations with Mr. Riley when he came?

A. Only about the boat; that's all.

Q. What conversations did you have?

A. Well, Mr. Riley would say, "she is just fine", and he would say, I guess, what he wanted done; sometimes he would say to let down a curtain or let up a curtain, or something like that.

Q. Sometimes he would give those instructions to you?

A. Very seldom, because we kept the boat well aired.

Q. Now, Mrs. Pilkington, when was the last time you saw Mr. Riley before the fire?

A. I went up there on Tuesday or Thursday before the fire to return the check for \$50.00.

Q. Tell us how you came to do that?

A. Well, because Mr. Riley—because the Palm Beach Company sent the check for \$50.00 and it should have been \$75.00.

Q. Why did you go to Palm Beach about that?

A. Because it should have been \$75.00; our bill was \$75.00.

Q. Did you go to Palm Beach?

A. Yes, I did.

Q. Did you see Mr. Riley there?

A. I did. I waited two or three hours to see Mr. Riley.

Q. Will you tell us just what took place when you saw Mr. Riley?

Mr. Underwood:

If your Honor please, the same objection.

The Court:

The same ruling. It is admitted subject to it being connected up.

Q. Will you tell us what you said and what he said?

A. Mr. Riley said that Mr. Phipps didn't want to pay \$75.00. I said, "the Captain says he can't take the boat for less than \$75.00"; so Mr. Riley says, "well, we will just take her out and anchor her somewhere". I says, "why,

Mr. Phipps is the only one that ever complained about our prices"—

Q. What else was said?

A. I don't remember if I carried the check back or if Mr. Riley sent it to us; I can't remember that; I just don't remember that, but I know the Captain wrote a letter in regards to that check.

Q. There was an additional check given?

A. A \$10.00 check, but that was later.

Q. Which made \$60.00?

A. Which made \$60.00. The Captain wrote Mr. Riley— wrote the Palm Beach Company and said he would let him store the boat for \$60.00.

Q. Was this \$60.00 that was paid, Mrs. Pilkington, for the month of May, 1935?

A. For the month of May, 1935.

Q. Have you told us all that was said at that conversation at that time as far as you remember?

A. Yes; the check was the only thing that I went up there about.

Q. Now tell us about the fire. Where were you when the fire broke out?

A. Well, Captain Abel came and I called Captain Pilkington and told him that Captain Abel wanted to get some equipment off of the Seminole.

Q. Then was there some conversation between Captain Pilkington and Abel?

A. Well, I heard Captain Pilkington—

Mr. Underwood:

May she be instructed to answer yes or no?

(By Mr. Matteson):

Q. Just tell me was there some conversation.

The Court:

The question is was there a conversation or not. That calls for a yes or no answer.

Q. Just answer it yes or no.

A. You see—

The Court:

Do you understand the question. Did you get the full question. I will let the Reporter read it, and then you can answer the question.

(Preceding question was read by the Reporter as above recorded.)

A. Yes.

Q. Did you hear that conversation, Mrs. Pilkington?

A. About the smoking.

Q. Who said that?

A. Captain Pilkington.

Q. Is that the only thing that you heard?

A. That is the only thing I heard.

Q. Then what happened?

A. Just a few minutes after I went in the house I heard a terrible noise. Oh, I can't explain what it was. I ran out on the porch and seen the whole building on fire.

Q. How far is your house from the building, or was it at that time?

A. I guess our house was 35 or 40 feet away.

Q. When you saw that what did you do?

A. Turned in the alarm.

Q. How did you do that; by telephone?

A. Yes. I didn't even take time to look in the directory; I telephoned and asked the operator to get the fire department out there just as fast as possible, that our building was on fire.

Q. Did the fire department come?

A. Yes; they came in about five minutes; it just seemed like it was no time.

Q. What did you do while the fire was going on?

A. I got all of our books out of the house and all of our clothes and my machine—

Q. Your sewing machine?

A. Yes, because I knew everything would be lost.

Q. Where did you take them?

A. I took them over to the caretaker's house.

Q. That is some distance farther away?

A. Just about 100 feet.

Q. Now was there anything else that you saw happen during the fire?

A. Yes. After I came back, after carrying everything out of the house, my nephew was on the bank and went over towards the Seminole, and I don't remember anything else after seeing him going over towards the fire.

Q. Your nephew was Thomas Anderson?

A. Yes; Thomas Anderson, Junior.

Q. Thomas Anderson, Jr.?

A. Yes.

Q. When you say he went over towards the Seminole, you mean—

A. The time he went over to save the man that was blown off the boat onto the bank.

Q. You didn't see him any more after that?

A. No, because I had a heart attack.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. You stated, as I understand it, that the first time you saw Mr. Riley was the time he came there with Mr. Phipps, Mr. John S. Phipps?

A. Yes.

Q. Now shortly after that, that is, within a few days or within a few weeks, or a short time after that visit, did you make any alterations or change as to the person to whom you sent the bills for the boats placed there by Mr. Phipps?

A. Whatever is on the books, Mr. Blotts.

Q. Did you make any change?

A. Whatever the Captain told me I entered in the books at that time.

Q. But I want to know whether you did or not.

A. Yes, I made a change on the books.

Q. And that is the change you testified to Mr. Underwood in reference to the first book, is that right?

A. Yes, sir.

Mr. Botts:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Can you point out to me, Mrs. Pilkington, in which book you made that change?

A. I think it was in 1931 or 1932.

The Court:

To whom were the bills sent before that time?

The Witness:

To Mr. A. A. Simmon.

The Court:

And after that time they were sent to—

The Witness:

Palm Beach Company, Palm Beach Florida.

By Mr. Botts:

Q. I will ask you, Mrs. Pilkington, whether or not you can identify from any of these books the time that you made that change?

Mr. Underwood:

Just a minute—

The Court:

Wait a minute; the—

Mr. Underwood:

I have the witness on cross examination.

Mr. Botts:

I don't think Mr. Underwood asked the witness any questions.

Mr. Underwood:

The record will speak for that, but I will bow to Mr. Botts and let him go on.

A. It is 1929 I think, in the book, but I wouldn't say positively, Judge; it was between 1929 and 1930 or 1931; I won't be sure, but whatever is on the books, Judge, is correct.

The Court:

What you have on the books in evidence—

The Witness:

Here it is: "Send to Palm Beach Company", and when I sent out the statements I sent out the statements according to this—

Mr. Botts:

If you can identify the dates—

The Witness:

It is Palm Beach Company, and I evidently must have sent it out In 1929, but I wouldn't say positively.

Mr. Botts:

That is all.

Cross Examination (Continued.)

By Mr. Underwood:

Q. Now sometimes you changed from sending the bills to Mr. Simmon to Mr. Huff. There was a time at the beginning when you sent your bills to Mr. Simmon?

A. Yes.

Q. Then you changed from Mr. Simmon to Mr. Huff?

A. Yes.

Q. And then you changed back from Mr. Huff to Mr. Simmon, did you not?

A. No.

Q. You changed from Huff to Riley?

A. Palm Beach Company.

Q. I see. You first sent your bills to Simmon?

A. Yes.

Q. Then to Huff at Palm Beach.

A. Pardon me. What is your name?

Q. Underwood.

A. Mr. Underwood, I don't remember sending a bill to Mr. Huff; I can't remember positively about that, but I know I sent it in to the Palm Beach Company.

Q. You never sent any bills to Mr. J. S. Phipps?

A. Never.

Q. You said something about Captain Pilkington's hearing being bad; how long has it been bad?

A. I guess Captain Pilkington has been deaf ever since I have known him.

Q. That would be a great many years before the fire?

A. Yes.

Q. And a great many years before the Seminole first came to your boatyard at Fort Lauderdale?

A. Yes.

Q. Your boatyard at Fort Lauderdale has been rebuilt since the fire, has it not?

A. Yes.

Q. And you have a better yard than you had before, I take it, is that right?

A. Yes, sir.

Q. I have noticed nothing in these books, Mrs. Pilkington, that would indicate who the owner of the boat was. Have you in your recent examination of them observed anything as to that with reference to the Seminole or the Iolanthe?

A. Well, we always—

Q. Not what you always did. Have you observed anything in these books to indicate who the owner of the boat was?

A. Mr. Phipps.

Q. Can you show me Mr. Phipps' name in any of these books?

A. Only the orders we got from Mr. Riley.

Q. Can you show me anything in the books about that?

A. No. Mr. Phipps'—

Q. Mr. Phipps' isn't in these books, is it?

A. Pardon me. Mr. Underwood, may I say something to you?

Q. If it is in answer to any question I have asked you.

A. Only once is Mr. Phipps' name in the books. We received a check for \$37.08, and that was in 19—let me see now—1933 I believe it was; it is in these books.

Mr. Matteson:

Would this be the book, Mrs. Pilkington (handing book to witness)?

A. I think it was in '31 or '32.

(By Mr. Underwood):

Q. Is this the check?

A. \$37.51.

Q. How about "\$37.08"?

A. \$37.08 is correct.

Q. Is this the check?

A. That is right; December—

Q. December 9, 1930?

A. Yes.

Q. Is that Captain Pilkington's signature?

A. Yes, that is Captain Pilkington's signature.

Q. Will you look at this little file here; this file contains four bills and four checks. Will you let me know, please, whether these are bills sent out by you or Captain Pilkington and whether on the back of the checks there are indorsements by Captain Pilkington or you for him?

A. Yes; that is my signature on this (indicating).

Q. Have you looked at all four of them?

A. Yes.

Q. They are all four either signed by Captain Pilkington by you for him?

A. Yes.

Q. And these bills—

A. I made out these four bills myself.

Q. And they are on the Iolanthe in each instance, are they not?

A. Yes.

Mr. Underwood:

I offer this file for identification.

Mr. Matteson:

No objection.

(The four checks and four bills above referred to were marked Respondents' Exhibit K for identification.)

Q. Did you keep any record of how often Mr. Riley came down?

A. No. Once a month he used to come until 1935; then he didn't call at our yard at all.

Q. He didn't bring the checks with him, did he?

A. No, he mailed them to us.

Q. When you had this conversation with Mr. Riley about the reduction from \$75.00 to \$50.00 shortly before the fire in Palm Beach, was anybody else present?

A. No.

Mr. Underwood:

If your Honor please, I move to strike out what this witness said that Mr. Riley said that Mr. Phipps said on that occasion.

The Court:

Wouldn't that be subject to the same ruling? If I am satisfied on the consideration of the whole record that Mr. Riley was empowered to bind Mr. Phipps—

Mr. Underwood:

I think that is the same situation.

The Court:

I will make the same ruling.

Q. Do you remember that Abel brought that \$10.00 check with him?

A. No, I can't say.

Q. You don't remember whether he did or not?

A. No, but I believe he did; I won't say positively.

Q. I believe you said that the first you knew of the fire was an explosion and you went out and saw the whole place burning?

A. I didn't know what it was until I went out and seen the whole place on fire.

Q. How soon after you heard the explosion did you see the shed?

A. In a second.

Q. You looked out right away?

A. Yes, I looked out and seen it all ablaze.

Q. How much of the shed was burning when you looked the first time?

A. It seemed like it was the length of the Seminole.

Q. Which side of the shed did you say you looked?

A. The northwest—wait a minute, now. We will say this was the house—

Q. The house was on the far side of the shed from the Seminole, was it not?

A. On this side (indicating).

Q. And the house was—could you see through the shed when you got there?

A. Yes, and over on top of the shed.

Q. Was the end of the shed nearest to you on fire at that time?

A. Well, I guess it was about the middle of the boat when it all came out.

Q. I am talking about the shed now.

A. I am talking about the shed.

Q. You mean that the fire had reached the middle of the shed?

A. No indeed; it came right out from that big smoke stack.

Q. You could see the Seminole's smoke-stack when you looked?

A. I could see the smoke coming out of it.

Q. Could you see the Seminole's smoke-stack when you looked?

A. I could see where it was.

Q. Where was it?

A. Right about the middle of the boat.

Q. When you telephoned did you just tell the operator or did you talk to the fire department yourself?

A. I asked the operator to send the fire department out at once, that our building was on fire.

Q. You didn't talk to the fire department yourself at all?

A. No.

Q. Are you sure about that?

A. I called the second time and they said that they were on the way out; the first time the operator turned in the alarm.

Q. There were men employed at the boatyard when the explosion occurred?

A. I couldn't tell you. I was getting things out of my house.

Q. How many men were there?

A. Well, we had two colored men and my brother, Mr. Anderson.

Q. Were they regularly employed there?

A. Just one.

Q. Which one?

A. Sol.

Q. What is his name?

A. Sol Sewell.

Q. Is he still there?

A. Yes.

Q. Who was the other negro?

A. I really couldn't say; I don't remember his name.

Q. Is he still there?

A. No.

Q. And Mr. Anderson, your brother, was he there at that time?

A. Yes, he was there. He was off the place about twenty minutes; he wasn't working for the Captain at the time.

Q. But he was from time to time?

A. Yes, from time to time.

Q. What were Mr. Anderson's duties and Sol's duties when they worked there?

A. The Captain was getting the Basin ready to build another shed on the other side of the Seminole.

Q. And they were working around the place?

A. Yes.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Did you have any insurance on your shed?

A. Only \$6,000.00.

Mr. Underwood:

I object to that.

The Court:

What is the relevancy of that?

Mr. Matteson:

If your Honor please, Mr. Underwood asked the question: "You have a bigger and better place there than you had before", and I am simply trying to bring out—

The Court:

I am afraid that would be going too far; that would be going too far on that.

The Witness:

We had to borrow money to rebuild.

The Court:

The objection is sustained.

Mr. Matteson:

Then could we strike out the answer of the witness to the effect that they had a bigger and better place than they had before?

The Court:

Is there any objection to that, Mr. Underwood?

Mr. Underwood:

No, I have no objection to that.

The Court:

The motion will be granted.

(Adjournment taken until 9:30 A. M. March 21, 1939.)

March 21, 1939. 9:48 o'clock a. m.

Hearing resumed pursuant to adjournment of the previous day. Appearances same as heretofore noted.

802

Thereupon: **LESLIE TYLER BROWN** was recalled as a witness by the libelants and further testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Mr. Brown, I believe that you telephoned to Mr. Dyer last night and told him there was a correction you wanted to make in your testimony?

A. I did, sir.

Q. Is that a fact?

A. Yes, sir.

Q. What is the correction that you wanted to make?

A. I want to say that I left the boat in the spring of '28 instead of '27 as I said yesterday.

Q. And how have you come to make this correction?

A. I suppose it just stuck in my mind. I got home and asked the wife when I left the Seminole; she said '27. I says "I am still not satisfied". And I asked the daughter, and she apparently didn't want to get into the argument, but she finally got in the argument with us, and we dated from the September '26 hurricane, it was a good date to start from, and we started from there. Our home was practically destroyed, and we had to move. We lived so many months in one house, and the rents were too high; we moved from there to another one, so many months; and the owner of this original house came for us to come back to his property, to take care of his property and would give us lower rents; and we went back and stayed there so many months, and were there when I left the Seminole, which figured out '28 rather than '27. I had no other records of it, and I had no other way to arrive at that conclusion.

Q. I understand that now your recollection is that you left the Seminole in the spring of 1928; is that right?

A. Yes, sir.

Q. Do you recall any more nearly than that, approximately the time?

A. No; I say the spring of '28; the date I don't remember.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Mr. Brown, where was the Seminole when you left her?

A. At John Seybold's property in the Miami River.

Q. And what was going on at the time?

A. Lay-up, practically laid up; just laying there waiting for orders.

Q. No work being done?

A. Oh yes, we done our general routine of work.

Q. Just ordinary daily cleaning up?

A. Yes, sir.

Q. No general work?

A. I don't remember no general work being done at that particular time, any more than routine.

Mr. Underwood:

That is all.

(Witness excused.)

Mr. Botts:

If the Court please, on yesterday Mr. Underwood mentioned the fact that there were some exceptions to my petition in there.

The Court:

I would prefer to hear it when I hear the other matters.

Mr. Underwood:

I think I can agree with Mr. Botts that if your Honor does overrule the exceptions, it can be considered that I have filed what amounts to a general denial of the testimony heretofore taken and that which will be taken, and that it may be used: can we agree on that?

Mr. Botts:

Certainly.

The Court:

All right; we will proceed.

825 Thereupon: BENJAMIN F. McCOY was produced as a witness by the libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Matteson:

Q. Your full name?

A. Benjamin Franklin McCoy.

Q. Where do you live, Mr. McCoy?

A. 166 Sunset Avenue, Palm Beach.

Q. Your brother is William McCoy?

A. My brother is William McCoy; William F. McCoy.

Q. And are you an officer of the McCoy Bros. Indian River Navigation Company?

A. I happen to be president of it.

Q. And did that company own a vessel known as the Blue Lagoon?

A. It did.

Q. And did that corporation own the Blue Lagoon at the time of the fire on June 24, 1935?

A. It did.

Q. And in what state is this corporation incorporated, do you know?

A. She was incorporated in the State of Florida in 1913.

Q. And this corporation is one of the libelants in this case, is it not?—making a claim for loss?

A. Oh, yes, we are claiming damages for the loss of the boat; that is, the company is.

Q. What sort of a boat was the Blue Lagoon?

A. She was 52 feet long and 16 feet wide; a houseboat.

Q. What sort of motive power did she have?

A. She had gasoline motors; Palmer.

Q. Was this boat the Blue Lagoon stored at Pilkington's yard at the time of the fire?

A. She was stored at Pilkington's yard right alongside of the Seminole.

Q. Will you tell us when she was taken there, and what your arrangements with Captain Pilkington were?

A. Why we had stored the Blue Lagoon, I don't know whether it was once or twice or three times, previous to this—that is, previous to the last time. When we went there why, to lay up the boat in storage under a shed, Mr. Pilkington, the first time, he said we would have to take all the gasoline out, as he had no place to store gasoline; and of course we went up there with as near empty tanks as possible. Then we would take the gasoline out of the car at various times and put it—I mean take the gasoline out of the boat tanks, draining it at the carburetor of the engine, and put it into the car. We had a Lincoln, had a pretty big tank capacity. This particular time, this last time we went up there, I remember we took out about fifteen gallons of gas and put it into the tank of the car—of the automobile, the Lincoln we had. That holds twenty gallons, the tank does, of the Lincoln. Then there was some surplus gasoline over, so we put—filled a five-gallon can, and another five-gallon can about half way; so the total we took out there was about,—oh about 22 or 25 gallons we will call it. And of course we carried that on up with us; and we got up to Palm Beach and we poured some, I remember, into the tank again; well, that is the tank of the car. The first notification we got that the boat had burned up, was the mail carrier got in there this Monday evening with a paper; it was raining like the deuce; and said "Does this interest you?" Says "There has been a fire down at Lauderdale." So we found out there was a fire down there, and we went down the next thing in the morning. Now coming back to Pilkington, Pilkington told us that all boats had to have the gasoline out of there; didn't specify any boat, whether the gas was out of there, but he said all boats had to have their gasoline out of there, ours included; so we took ours out, as I

told you. And this particular time I didn't ask him whether the Seminole had any gas or anything else; but, let's see; Monday, Monday night, that's when they started, when they got the pumps out there to pump her out—the Seminole. Was it Monday night?—no, Tuesday night; Tuesday night; because we got down there Tuesday morning. It was dark; that is, darkness had come down; and the barge was out there with the pumps in it, to do the pumping. The Seminole was sunk, but the water was above her gun'ales about—well the water was all over her, flowing into it, you see; and they estimated as soon as the tide would go down why then the gun'ales would be above the water, then they would start pumping. And I think they estimated that would be about ten o'clock; around about; but the point was, it was just getting dark, seven o'clock, something like that, getting dusk anyway; we noticed quite a smell of gasoline—it was noticeable.

Q. Where was this that you noticed this?

A. At Pilkington's.

Q. Where were you when you noticed this smell of gasoline?

A. Oh we was right on the shore there. Well the Seminole laid over there about 100 feet from there; we was between Pilkington's house and the Seminole; that is the Seminole I mean was away over there on the outside of that, where she was sunk; the Blue Lagoon in between; and another one. So we noticed the smell of this gasoline; the tide was a little—I think the tide was ebbing down a little bit, and I went and asked Mrs. Pilkington, I says "What do you cook with around here? Do you cook with gasoline?"

Mr. Underwood:

Your Honor, I object to this conversation.

Q. Well don't tell us about the conversation with Mrs. Pilkington; just tell us what you saw and observed, Mr. McCoy.

A. Well, I saw this much then; the tops of those poles were afire; we tried to put them out with fire extinguishers that we got, some of them was floating in the water, half discharged; and the fire extinguishers, that is these old—you know, you turn them upside down—why they wouldn't reach the tops of those poles. The only reason we wanted to put them out was there was a smell of gasoline there; gasoline was strong. While we were there we all had—we all went and took refuge under, you might call it the back space or back porch of Pilkington's, because of an intense, heavy rain that came down, one of those tropical showers, that practically put all those fires out. Very soon after that why—oh—well no, you can't introduce conversation, again.

Mr. Underwood:

If your Honor please, may we proceed by question and answer, in the usual way?

Mr. Matteson:

If your Honor please, I think certainly that saves a lot of time; Mr. McCoy was there, and he is telling us the story of what he saw. I think he understands he is not to refer to conversations. It seems to me this is the easiest way to do it.

The Court:

Let's proceed in the present way for the present.

Q. Go ahead, then.

A. Why while we was there we smelled the gasoline so strong, and one woman spoke up and she said "If you had kept all the gasoline"—

The Court:

No.—Perhaps we had better ask questions.

Q. Well, you were telling us what you observed there in the course of that evening with respect to gas. Now will you tell us that?

A. Then the gas—that is the wrecking pump I will call it—wrecking outfit was on a little barge; after this shower they started pumping.

Q. Where were you when they started pumping?

A. I think I was in a rowboat, and got out aboard with them; but the gasoline as I say was around there. Now after a while they commenced to lower the water inside of the Seminole, because the tide had went down leaving her gun'ales, as I would call it, leaving her gun'ales above water; no more water was running in, excepting what was running in through the broken pipe connections. As the water went down the gasoline got stronger, very much stronger; the fact is that when it got away down, the centrifugal pump was throwing over gasoline and water; you could look at it out at the end of the little—oh I think they had about four inch pipe—discharge pipe; might have been larger than that, might have been six inches; but you could notice it, that when the discharge stream struck the surface of the water it wasn't water alone, it was gasoline; and as I say the smell was so strong that we was afraid; at least I was afraid that the thing might blow up. Because on top of the spark plugs why it was liable to create a spark, you see.

Q. Now before we get any further, Mr. McCoy, you said that you could tell when the discharge stream hit the water, that it was not all water. Now tell us how you could tell that.

A. Well I can't really tell you exactly, but it would act different; the water—when water strikes down onto the surface, which is pure water alone, it leaves a whole lot of bubbles; but this seemed to act different; it had a dif-

ferent kind of a roll to it, like; seemed as though some of the bubbles were extinguished much quicker. I tell you, I can't exactly tell it in technical language, excepting that it looked different; same as one person looks different from another.

Q. Perhaps right now I had better ask you, Mr. McCoy, how much experience have you had with gasoline and gasoline boats?

Q. Well the first one we built was around about 1900, I think, called the Yankee Doodle; we put a gasoline engine in her; and we have built various boats at various times; and I have generally done the installation of the machinery. We built one boat called the Uncle Sam, that had a 20-horse gasoline engine, Standard; the pipe run from the tank and run on the outside of the keel or the garboard, right underneath; that was to keep the gasoline on the outside of the boat; and then the pipe came up to the engine.

Q. We will leave that for a minute:

A. All right.

Q. How many boats have you built or operated, that were propelled by gasoline fuel?

A. Well, what we built was the Hibiscus, she was 110-foot; the Siesta, is 100-foot; well we operated boats up and down the river here, and across the Everglades, some of them under government inspection and some of them weren't; but we have never had an accident in gasoline in all that time of different—

Q. Well have you ever operated a shipyard, Mr. McCoy?

A. Well not a shipyard, but a boat yard you would call it, at Holly Hill, and we built various boats, as I said.

Q. You and your brother operated that yard?

A. Yes. I done the installation of the machinery.

Q. And do you hold any certificate as an engineer?

A. Yes, I hold a Diesel engineer's license.

Q. Unlimited?

A. Unlimited.

Q. How long have you held such a license?

A. Oh gosh, I don't know; I think some time during the war I got it.

Q. You have held it ever since that time?

A. About twenty years, I guess.

Q. About twenty years?

A. I should say that.

Q. Still in effect?

A. Still in effect; yes, sir.

Q. How much experience have you had as a licensed engineer on oil propelled vessels, oil or gasoline.

A. On gasoline?

Q. Yes.

A. Well gosh, I have had—oh I don't know; gosh, I have been captain, and I have been engineer, and I have been combined, both at one time: in regard to the actual operation of gasoline, I can't say how many years. But that would—I think you might leave it out.

Q. Did you have any connection with the operation of the Blue Lagoon?

A. Yes, I was the engineer of her; my brother he did the steering; and down below I would run the engine; because we didn't have it connected up in regard to the bow controls or anything.

Q. And how many years had you had the Blue Lagoon at the time of the fire?

A. '29, '30, '31, '32, '33, '34, '35—about seven years.

Q. And for what purposes had you operated her during that period?

A. Well, we used it for our own pleasure for a while; then we thought we could turn it into a commercial boat and carry parties with it; but we didn't carry very many.

Q. Now in connection with this experience that you have had as an engineer and boat constructor, and other

capacities, had you seen mixtures of gasoline and water before this?

A. Oh yes, plenty of times.

Q. Does gasoline float on water, or not?

A. It floats; it certainly does float, right on top of water.

Q. And is it in the light of your experience and observations prior to that time, that you reached the conclusion on observing the discharge of the pump on this occasion, that it was a mixture of gasoline and water?

A. That's what I did; because you could see kind of a bubble, you know; not a bubble exactly; a bubble of course contains air inside of it; but these were—you might call them solid bubbles; go off to one side; whereas the other bubbles of air why they would go a little ways and bust, you know, like a soap bubble. In other words you might call it gobs going off; they would float off by themselves and then evaporate and disappear.

Q. Now did you observe any other evidences of gasoline on the Seminole, while you were there?

A. I did. Carl Holmes and Lowney and Capt. Patten and Bill and myself, they had got the boat pretty well pumped down and she was floating up, but there was water coming in still in certain places; they was going around, Lowney had on boots, I think, and so did Carl Holmes—or shoes—or overalls and shoes to keep their feet from being cut by glass, you know; and they were going around, you know, finding these connections. I thought I would have to the same thing; I only had on shoes, and clothes, I didn't have any boots to get in the water, so I went around hanging from—well you might call it those stanchions or beams sticking up; so I went from the—

Q. Are you referring to these stanchions or beams—

A. Those are the steel of the Seminole.

Q. Part of the structure of the Seminole?

A. Yes, part of the structure. I went around from the—it was on the starboard side that this pump barge was located, and I went around, went around to the stern, I discovered there where you could see a stream of water coming up, you know; and I told them there was a broken connection; so they come along there and stuck a pipe in—or suck a—

Q. Plug?

A. A plug out of a bag or something like that, he had with him. Then I came around to abreast of the engine room on the port side, and Lowney, Jack Lowney was with me; he had a flashlight, and he was flashing it along, you know, in various places.

Q. Where was he? Was he inside of the boat, or outside?

A. He was inside of the boat, and I was right along, like here and Lowney was right here, and here is this bulkhead, forward bulkhead of the—containing the tanks. Well that is just about the width of it; there was one tank, two tanks, three tanks, four tanks, and here is this forward bulkhead.

Q. You mean the bulkhead separating the tanks from the engine room?

A. Bulkhead separating the tanks from the engine room; and I says to—"Here is the matter right about here, the port motor and the starboard motor".

Q. Now if you can—the reporter can't take down on the record your motions; so I think if you will just try to describe it in words, that will be a little better.

A. All right. Well anyway the space between the port motor and the forward bulkhead of the engine room, and I noticed a coil in the water, like a spring, again, and I says to Lowney, I says —

Mr. Underwood:

If your Honor please, I object to the conversation.

The Court:

Don't repeat the conversation; what you said to some one else, or what they said to you.

A. All right. I looked at that spring of water, and it looked to me like water at first, then I looked closer, and I says to myself "That is gasoline": well I don't know whether I am—whether I am wrong or not, as to what I said to myself. Well I can say now—wait a minute; I can't say how I verified it, because—

Q. Well perhaps something that you have said or done there may be admissible then. You saw this coil in the water?

A. Yes.

Q. Now did you call anybody's attention to that?

A. I did; I called—but if I can't tell what I said to him, why—

Q. Well first of all, did you call some one's attention to it?

A. I did.

Q. And who was that?

A. Jack Lowney; he had the flashlight in his hand; he had the flashlight, and I says "For God's sakes don't"—

Mr. Underwood:

I object to what he said.

The Court:

He can tell what he saw, and describe it, and state the fact, that he commented on it to some one else; but as to what was said between him and that some one else, is incompetent.

Mr. Matteson:

Then we will try to keep within those limits now.

Q. I think you said you called Lowney's attention to it?

A. Yes.

Q. As a result of or following that, what did Lowney do?

A. He stuck his fingers into this spring and smelled of it.

Q. And as the "result of that what did you do?"

Mr. Underwood:

That is leading. * * *

Q. —if anything.—I will add that.

The Court:

I don't think that is leading; he may answer that.

Q. As a result of that, what if anything did you do?

A. Well I told him what to do; and we called other people over there.—Carl Holmes, Capt. Patten; and my decision that it was gasoline coming up on that water and evaporating,—rolled; had a different characteristic entirely from water coming up.

Q. Were there any orders given at that time?

A. Well, I gave orders, but I can't tell what they were—what my orders were. That is of course, I wasn't in authority, or anything like that; but I simply—what you might say safety orders, precautionary, so we wouldn't have an explosion there and endanger us all.

Q. Now what did you do?

A. What did I do? I went over to the—I went back and got over to the barge where—well Bill was over on the land, and I says to Patten—there it goes again.

Q. Did you stay there or did you not?

A. I did not stay there; it was too dangerous for me, too dangerous for Bill. I warned other people how dangerous it was, and I got out; and we went to the hotel; this

was around, I should say around about twelve or one o'clock, in the morning.

Q. Now before we leave this, then: you saw something welling up there, which you say—

A. I would say was gasoline.

Q. —you decided was gasoline. Can you give us any idea of the quantity that you saw?

A. Quantity? From the amount of gasoline out of that one particular place I couldn't say; but the amount of gasoline totally, that we had smelled and that had been pumped overboard, I would say it was hundreds of gallons. It was the most dangerous place I had been in for a long time; and so as I say we got out of there, because I was really afraid. Because if the thing went up, why there would have been about a dozen people that couldn't have escaped, because the gasoline was over the surface of everything, all the surface of the water.

Q. When did you come back to the yard?

A. I came back to the boat, that is back on the shore, oh I should judge it might have been seven o'clock, might have been eight o'clock; most likely eight o'clock. And they were—they had just found the body and was putting it into a canvas; and I got out aboard the Seminole just as they carried the body past me; just as they carried the body past me.

Q. What did you do? Where did you go?

A. Oh I looked around the place, naturally, where they—where the body had been found. Just about there, why—or near to it, a little over at this side, the left of it you might say, the port of it, why I saw a gasoline can; I saw it lying there:

Q. Just a minute; are you referring to this can that I hold in my hand, and which has been marked libelants' Exhibit #13?

A. That looks just exactly like it; I would say that was it.

Q. Where did you—

A. And I noticed that the—excuse me.

Q. I was going to ask you more particularly just where you saw it.

A. Well I should say it was—well I will call it midway between the port engine and the port side of the vessel, about two or three feet back from the bulkhead—forward bulkhead.

Q. Did I understand you to say port side?

A. The port side, yes; the port engine and the port side of the vessel.

Q. Well, that is all right; that is clear enough. Now just when was it that you saw this can there? Just when was this?

A. Oh that was just at the same time the body was there; no. the body was out then, the body had just been taken ashore.

Q. You mean the body of Captain Abel?

A. Yes, body of Captain Abel had just been taken ashore. I say about eight o'clock in the morning; it might have been, you know we don't look at our watches under those circumstances.

Q. But do I understand that you went out to the Seminole right after that?

A. I was out there when they was taking the body; they had wrapped the body up, and I was aboard of the Seminole, and they picked the body up and just carrying it by me.

Q. And it was right after that—

A. I saw that can.

Q. You saw the can?

A. Yes, sir.

Q. Before I forget it, Mr. McCoy, what kind of a pump was it that they were using to pump out the Seminole?

A. They had a centrifugal pump, direct connected to an automobile—either a four or six-cylinder automobile engine.

Q. Gasoline engine?

A. Gasoline engine, yes.

Q. What sort of an exhaust did it have?

A. What kind of an exhaust?

A. Why I think it only had a short chunk of pipe up there, just a short piece of pipe sticking up; I think so; I didn't pay much attention to that, to tell you the truth.

Q. Did that—the fact that that type of engine was in use in pumping out the boat, have any bearing on your thought that it was dangerous there, or not?

A. The only danger it would have is from liability of setting fire to the gasoline that was already floating on the water. The engine did not miss, because it was all—it was a steady roar—a steady purr out of that engine, and consequently she was not pumping any gasoline—any gasoline odors out of her exhaust; it was all pure carbon monoxide—that is the exhaust, regular exhaust smell. There was no gasoline smell came from that engine; it was entirely from what was pumped.

Q. Well was there any danger of the engine setting fire to anything, or not?

A. Yes, there was danger in this way, that if something would happen and she would start to miss—a wire would drop off, start a spark on top of the cylinder heads, we will call it,—the body of the engine there, and those gasoline fumes, it was a liability to set it off, yes; but there wasn't anything like that.

Q. Now getting back to this pumping that we were speaking of; you said that you saw the discharge from the pump going overboard, and in your judgment that was at least partially gasoline. Now where were they pumping from at that time?

A. They were pumping out the Seminole; I didn't notice just where the suction pipe was, but it was right in the Seminole, that was what they was pumping; pumping out the Seminole—the interior of the Seminole; the Seminole's hull.

Q. Well do you recall where the suction pipe was at that time—where in the Seminole?

A. No, I couldn't, because that's not clear in my mind at all.

Q. And this spring that you spoke of, I want to be sure that we have that located particularly, too.

A. That's located between the bulkhead—it was located right amidships, forward of the engine—of the two engines, and the bulkhead; of course the two engines, one is one side of amidships and one is the other side; and here is this spring right here.

Q. All right.

A. But it might have been a foot or two over to the port side.

Q. Now, could you see what the source of this was? Did you see what the source of this gasoline was?

A. No, I did not; I didn't follow out, because the water you see—but I guess there must have been; I guess there must have been about four feet of water in the hull yet, so I didn't want to get my clothes dirty to dive down and find out. This spring was very near, I would say a little off to one side of where the body was found, a little to the right of it.

Q. Now did the diver do anything with respect to this spring?

A. We left, let them fight it out; we wasn't going to get burned up.

Q. Now when you were there, what had happened to Blue Lagoon as far as we could see.

A. Well, we just saw some charred sticks sticking up out of the water, and that was what was left of the Blue Lagoon as far as we could see.

Q. Was she a wooden vessel?

A. She was a wooden vessel, yes. There was nothing left of her above water line.

Q. And how was her hull, the wreck of her hull lying with respect to the Seminole?

A. Well, it was lying right alongside of where we had left her, right alongside of the Seminole; right alongside of the Seminole. When we left her, that is when they were both afloat, we could step from the Blue Lagoon to the Seminole; well, a distance from here to the desk,—about four or five feet.

Q. Now, I want to go back to the wreck when you came back the next morning: you told us that you observed at that time the gasoline can or what you have referred to as the gasoline can.

A. Yes.

Q. Now, tell us what else you saw and did that morning.

A. Well, of course, I saw a lot of tangled, blackened-up machinery, and the Universal plant—looked like the Universal plant there, of the auxiliaries. But there was one thing there I noticed, that there was no shut-off valves next to the carburetor; and that was all—

Q. What carburetors are you referring to?

A. The carburetors of the main engine; I didn't notice the auxiliaries,—I mean I didn't specifically get down to the auxiliaries, but there was this line of the gas line running right back to the carburetor of the Winton. Of course, the manifold of the Winton is up, of course runs right along from cylinder to cylinder,—the cylinder head; and the carburetor was down on the floor, approximately on the floor, with the gasoline line leading forward; I didn't look to see where that gasoline line was, but I noticed that next to the carburetor, where in ordinary practice we always put a valve to shut off, there was no shut-off valve at all, whatsoever.

Q. Now, tell me what else you observed in the engine-room of the wreck that morning.

A. Well, I had been aboard the Seminole about three years before, when she was hauled out down at Coconut Grove, they was putting in a steel plate in her bottom, and I went down in the engineroom and I saw there was a lot

of machinery crowded together, but— and so I just thought what a shame it was that all this stuff had been burned up.

Q. I would like to show you this Exhibit No. 11 and ask you if you recognize that, if you ever saw it before?

A. I don't know. As I say, I can't because I did not,— I honestly did not go looking around in among the valves or the piping.

Q. Did you observe whether or not there was a drain line for gasoline in the engineroom?

A. Well, in one way. Of course the water was out of her then, and I got down—you see the Seminole was originally a steam yacht, and they had a coal bunker that they put these gasoline tanks in; and this coal bunker, or the coal hole, why—, at least I took what was the coal hole was an opening in the forward bulkhead of the engineroom. I got down on my knees and looked underneath this: I could see the bottoms of the gasoline tanks, sitting on kind of a steel framework, but the pipes was broken from the explosion and I couldn't tell much; the fact is, I didn't try to trace out anything.

Q. I show you this photograph, Libelants' Exhibit 9, you recognize that?

A. Yes. I kind of think I do. This looks to me as though it is—, well, if this is the forward bulkhead, this is the forward hole.

Q. You are referring to this dark part of the picture?

A. This dark part out here, yes.

Q. From which a line is drawn and the letter "A" is put; is that what you are referring to as the coal hole?

A. Yes.

Q. So you got down where you could look down underneath there?

A. Yes.

Q. What did you see?

A. Well, I saw the bottoms of the tanks sitting up approximately, I would say the bottoms of the tanks were

sitting along like that, you know between the coal hole and sitting on—, well, angle irons and framework of that kind, because I could see the bottoms of the tanks.

Q. Was there any indication or any trace of a lead pan under the tanks at that time?

A. No, everything was all open, everything was all open, because lead, you see—, it might have been down in the bottom of the boat melted.

Q. What did you notice about the bottoms of those tanks?

A. Oh, that was the same day the body was found; might have been half an hour later.

Q. Yes, well what did you notice about them? What did you notice about the bottoms of the tanks?

A. Oh, what did I notice about the bottoms of the tanks?

Q. Describe them to us.

A. Well, simply looking into this hole here, and you could see the—and look this other way and see the other tank.

Q. Were the bottoms flat, concave or convex?

A. The bottoms was concave setting there. I have often thought that the proper way to set these tanks in was the reverse—

Mr. Underwood:

If your Honor please—

A. Excuse me.

Q. Did you notice any of the valves on the gasoline tanks?

A. No, I can't say that I did. That was just a—, I notice that there was some piping there, and what I took would be the gasoline manifold and the filling manifold; but in regard to just what they were, I didn't look at anything particularly:

Q. Can you identify this piece of piping and connections, which is Libelants' Exhibit No. 2?

A. No, I can't say that.

Q. Or did you see anything like that there?

A. Well, as near as I can recall from the looks of it, angles, or elbows and 45's and everything else around there— unions.

Q. Can you tell us how the tanks were connected with the engine room?

A. Well, as near as I can recall from the looks of it, there was a gasoline outlet, about four or five or six inches from the bottom of the tank, maybe seven inches, and that seemed to have a short pipe, or a short piece that run over to and through the bulkhead; and then there was a pipe, —I think they was all connected on to one pipe running athwartship, which would make a manifold out of it; but that is about all I looked at. To tell you honestly, I didn't try to trace it at all.

Q. Can you identify this photograph, Libelants' Exhibit 4?

A. Well, I saw something like that there, yes. There would be the bottom of the tank, here would be the valve; then there would be a— that's the bottom of the tank in there, and the connection head goes up; so as to get this up as high as the connection head, they put the discharge—, what will you call it? The bushing and then screwed the pipe in—, a short piece of pipe; then they put the valve on the outside here, so they could get at it; and there would be another pipe that would run athwartship, connecting from one tank to another.

Q. I show you Libelants' Exhibit No. 14.

A. No, I don't remember seeing that part there at all. I do distinctly remember seeing that can. The fact is, I called somebody's attention to it at the time.

Q. Did you try any of the valves that you observed?

A. No, I did not.

Q. I show you Libelants' Exhibit No. 6 and ask you if you can recognize that?

A. That's the top of the tanks. This is the—, Yes, this is the starboard side—, passageway. One, two, three, four—those are the tanks across there. You could see the bottom of them when you got down here and looked underneath this bulkhead and looked in there. In regard to the—, there was a tangled mass of piping, as I say, I didn't try to describe—, to look it through, or trace them out, or anything like that; but I simply recognized that possibly that—, I didn't know whether that one is or not—, but the description of what he told me afterwards—

Q. Well, never mind about that. Is that the way the tanks looked when you saw them?

A. Yes.

Q. Referring to Libelants' Exhibit 6, who was there when the body of Abel was taken off the Seminole; do you recall?

A. Well, you see, we had just got there, and just who was there, I couldn't say.

Q. Do you remember any of those that were there at that time?

A. Why, I think Captain Holm, Captain Patten, Jack Lowney, and there was the Undertaker waiting on shore, and there was two or three other people.

Q. Was the Coroner there?

A. I don't know. I wouldn't know the Coroner if I seen him. I understood he was there but I wouldn't recognize, I wouldn't know him. But I would—, but I distinctly remember seeing the Undertaker standing on the shore, or at least who I took to be the Undertaker.

Q. Where is your brother, Bill, now?

A. Where is he now?

Q. Yes.

A. He is up at Lake Worth, sick.

Q. Is he able to come to the trial?

A. I don't hardly think so. It would excite him too much. The after effects on him would be too bad.

Q. Has he been ill for some time?

A. He has been ill since the middle of January—middle of December. He had ptomaine poisoning that brought on a heart attack.

Q. I show you these pictures, Mr. McCoy, and ask you if you know what they are and who took them.

A. Why, I took that one, the top of the tanks.

Q. And when was that taken?

A. I think that was taken the same day.

Q. That was the day the body was removed? Are you referring to the day the body was removed?

A. No, I am not, because—I forget what day it was. We had the camera down there and took them.

Q. About that day?

A. Somewheres around about that time. I couldn't say when.

Q. The Seminole was still in the wreckage in the shed there?

A. Oh yes. This is the Seminole wreckage, that is the Seminole.

Mr. Matteson:

We offer that one in evidence.

(The said photograph was received in evidence and marked Libelants' Exhibit No. 91.)

A. That boat over there, that's that steel barge.

Q. Now, I will show you the next one.

A. Well, this is Bill, Bill McCoy.

Q. There is a group of three persons here and the one at the left is Bill McCoy, is that right?

A. Yes. Bill McCoy, and in the center is Jack Lowney, and the next one on the right is Carl Horn.

Q. That's the diver?

A. That's the diver. Both of them divers.

Q. In this picture do any of the vessels appear?

A. Yes: in this picture that outside is that car float they was going to run across Miami Bay here, with cars on. The next one, well, I be darned if I can—, I think that is the stern of the Seminole. She has got her angle run down there. The next one ought to be the Blue Lagoon, but I wouldn't be sure of it because it is kind of distorted. There is the stern running down.

Q. Now, you have named these vessels, reading from right to left as they appear in the picture, is that right,

A. Yes. Now, let me look at this. No, I can't identify that thing, because I haven't got—my glasses are not strong enough. But I know this much, there is the barge, and these vessels here, but which is which there, I couldn't say now.

Q. But this is a picture that was taken at the yard, shortly after the fire?

A. Oh yes. I think that was taken the same day that the body was found. I think so.

Mr. Matteson:

I ask to have that marked in evidence.

(Said photograph was received in evidence and marked Libelants' Exhibit No. 92.)

Q. Now the next one.

A. Well, this next one, that is the Seminole's tanks, looking over to the port side, showing that steel railroad float over there. That is the little island over there, and beyond that is the New River. This is the top of the tanks—, of the two port tanks. You might call it, of the Seminole.

Q. That was taken about the time of the fire?

A. Yes, sir. Shortly afterwards.

Mr. Underwood:

The day the body was found?

Q. The day the body was found?

A. No, I couldn't say about that now. I didn't keep any track, you know, of that, and I wouldn't say.

Mr. Underwood:

Not before that?

A. Oh, no. Not before that; not before the fire.

Q. Not before the day the body was found?

A. No; that is, I don't know, I had the camera there, but I think I was busy doing something else.

Mr. Matteson:

I would like to mark this one in evidence.

(Said photograph was received in evidence and marked Libelants' Exhibit No. 93.)

Q. Now, this one.

A. That one is the—I don't know who took that one; Bill might have taken it. That's me standing up there at the engine room.

Q. And what vessel is that?

A. I am standing on the Seminole; and this is the Blue Lagoon,—what is left of her, in here.

Q. Just at the foreground of the picture, from the Seminole,—just in front of the Seminole as the picture is taken?

A. Yes, this is the—we are looking across the wreckage of the Blue Lagoon to this port side of the Seminole.

Q. I see; and when was this taken?

A. Gosh, I don't know; it might have been taken the day after the fire,—the day after the body was found, or it might have been taken of a Tuesday, or a Wednesday, or a couple of days later; I wouldn't say. Let's see, wait

a moment; no, that was taken after she was pulled up; was taken after the body was found.

Mr. Matteson:

Ask to have that marked in evidence.

(Said photograph so identified was received in evidence and marked as Libelants' Exhibit No. 94.)

Q. Now, have you told us all you observed about the engine room of the Seminole that you recall at this time, after the body was raised—after the body was recovered?

A. Why, I guess so, excepting my—when Carl went down looking for the body I held the air hose and line, and I told him—well, cut that out.

Q. You did hold the air hose and the life line?

A. Oh yes, I held the air hose, the life line; my brother and Captain Patten they worked the air pump, putting the air to him. I was afraid in getting down to those two engines, the two main engines, that some of that tangled piping and other things would slip and imprison this diver down there; so at my request he quit there for a while, but we had been at it an hour or two then; he would get in there, away up underneath that stuff, with the bubbles coming up; and I thought if that stuff ever slipped on him, it would be good-bye Carl Holm.

Q. Well, were you around there after that? You have told us the morning now after the body was recovered.

A. We were there that Tuesday morning; that was just after the fire; Wednesday morning the body was discovered, and I don't think we was there after Wednesday; we might have been. I know we made a trip or two down occasionally and stayed for an hour or so at different times.

Q. Did you see John Thomas at any time?

A. Why yes, I saw John Thomas; the first time I saw him was in the Samaritan Hospital up there at West Palm Beach.

Q. And when was that?

A. Well, now, I couldn't say, because it was very early in the—he had just been brought up a day or two, or a week from Lauderdale, where he had been in the hospital; and when I saw him he was laying in bed there, with this, what I call a gallows frame, to suspend his broken leg from.

Q. Was that some time in July?

A. That was in—yes, because it was just a short time up there, and I think we was going north, and what day we went up, I don't know, but I know we went and saw him there at the hospital just as soon as he was available to be seen after being brought up from Lauderdale.

Q. And who went to see him with you?

A. My brother Bill and myself.

Q. And did you talk with Thomas at the hospital?

A. Oh yes, we went in there, and I talked to him, and of course the first thing to do was to tell him he was looking pretty good, and the next thing to ask him about the fire, what in the world was the cause of it; so he told me—

Mr. Underwood:

Wait a minute. If your Honor please, may we caution the witness to go a little slowly here, we are getting down to the point, now.

The Court:

Before you tell any conversation, wait for any objections that may be made.

Q. Did he tell you about what happened at the time the fire started Answer yes or no.

A. He told me all about it. Well, do I talk now?

Q. Yes, that's fine.

